Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC

In the Matter of:	
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Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Oklahoma City Public Schools)
Oklahoma City, OK) File No. SLD-26218
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-4
)
Changes to the Board of Directors of the) CC Docket No. 97-2
National Exchange Carrier Association, Inc.)

To: The Commission

REQUEST FOR REVIEW BY THE FULL COMMISSION

Oklahoma City Public Schools ("School District"), by its representative, requests the Commission to review and thereafter to reverse the decision of the Telecommunications Access Policy Division, Wireline Competition Bureau ("WCB") in the above captioned matter, released November 18, 2002. In that decision, the WCB upheld a decision by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company not to fund fully the School District's request for universal service discounts on advanced telecommunications services, citing a rule that "flatly prohibits" an applicant from correcting a mistake, no matter what the circumstances.

The WCB agreed with the SLD, in essence, that as a matter of federal regulatory policy an applicant for universal service ("E-rate") support may not, *at any time or under*

any circumstances and without regard to the equities in any given case, receive more E-rate support than the amount that the applicant has typed or written into the space provided in Block 5 of its Form 471 application. Consequently, the WCB adopted the SLD's decision to fund only a fraction (\$84,677) of the School District's actual funding request of \$853,544 and to ignore completely every compelling circumstance that should have resulted in the SLD reaching a different result.

The SLD's Block 5 strict liability policy is unfair, unjust, and unwarranted. It affords an applicant no quarter. Moreover, as discussed in more detail below, it does not always even further the SLD's own stated administrative purpose for it. Further, if the Commission adopts this unforgiving policy, the underlying message to schools, libraries, service providers, Congress, and the public must be that the Schools and Libraries Universal Service Program's policy objectives take a back seat to the more important goal of unqualified clerical precision.

Finally, we submit that the SLD's Block 5 strict liability policy is unenforceable against the School District as the SLD exceeded its authority by promulgating a rule of such far-reaching and potentially devastating consequences, and the WCB should not have affirmed it without public notice and opportunity for comment.

Accordingly, the School District requests that the Commission remand this matter to the SLD with directions to fund fully the funding request in issue, FRN 663320.

Request for Waiver of the Commission's Rules

Alternatively, the School District requests that the Commission waive the application of the Block 5 strict liability policy to the FRN in issue, as it is in the public interest to do so. To the best of our knowledge, the circumstances are unique to this applicant in this funding year, and equitable considerations, such as (a) the amount of requested funding appearing clearly and correctly elsewhere in the application; (b) the applicant's diligence in attempting to get this matter corrected very early on in the

process; and (c) its care in otherwise completing the application, support a waiver in this case.

I. BACKGROUND: Placing This Matter in Perspective

The School District brings this case before the full Commission, not because it is poor and needy or because it could use the \$853,544.49 worth of E-rate discounts that are at stake—even though both of those statements are true. Rather, it is raising this appeal to the level of the full Commission because it believes that a policy of *strict* liability that ties an applicant to a mistaken dollar amount in one field of an otherwise accurate application form, with no regard for either the circumstances surrounding the error or the applicant's attempts to correct it, is arbitrary and capricious, as the stringency of it cannot be squared with any administrative interest, compelling or otherwise. Further, since the SLD first imposed this policy, the processes that the SLD uses to review applications have evolved to the point where it clearly would serve the public interest to modify the policy.

Unlike the vast majority of other E-rate appeals cases that the FCC is called on to review, the applicant in this instance violated no competitive bidding rule, missed no deadline, requested no ineligible services, and responded to every question that was put before it by the SLD. It simply made a clerical error in a single blank on the application form, entering a dollar amount that represented a monthly charge, rather than the annual charge. It is undisputed that the correct monthly amount was supplied elsewhere in the application, as part of the Description of Services submission. Further, the corrected amount would have been in line with the School District's request for the same services in the previous funding year. The School District notified the SLD of the error at the earliest possible moment it could—even before the point in the process that the SLD has established for catching certain kinds of clerical mistakes.

Nevertheless, the WCB has adopted the SLD's policy that no matter how early in the process an applicant might point out this kind of clerical error, the SLD's initial projection of its funding demand is so immutable that a correction in favor of a School District can *never* be made, while in stark contrast the SLD may adjust its own projections upwards continually for a period of months to account for mistakes that *it* has made.

The important facts in this case are readily distinguishable from those in the cases that the WCB cited as precedent for its decision. Further, the WCB was incorrect when it refused to consider as untimely the arguments that the School District raised in a supplemental filing regarding the accuracy and supposed relevance of SLD projections, because the information that was the basis of the supplemental filing did not become publicly available until after the deadline for submission of the appeal. (*See Request for Review by Oklahoma City Public Schools, Oklahoma City, OK* (Wireline Comp. Bur. rel. November 18, 2002 at n. 22) ("OCPS Order"), attached hereto as Exhibit A). Accordingly, for the reasons set forth and discussed in more detail in Section I., D. below, the School District requests that the Commission consider now the substance of the School District's supplemental filing, which is attached hereto as Exhibit B.

The School District will demonstrate that the Commission can modify the SLD's strict liability policy in such a way that the SLD will have the tools it needs to manage the program in an efficient and timely manner, while at the same time setting criteria that would allow the SLD to grant relief in the rare number of cases, like this one, where relief is warranted. For the 2001 funding year, it does not appear, based on the public record, that any other case would qualify for relief under this equitable, but very tough standard.

II. FACTS

As described in detail in the School District's Request for Review (attached hereto as Exhibit C), and in the WCB's findings of fact (OCPS Order at para. 5), the School District submitted a Form 471 application on January 11, 2001, roughly a week before the filing window closed for the 2001 funding year (then known as Funding Year 4). According to the SLD's records, it began data entering the application on January 24, 2001. On March 7, 2001, before the SLD had even completed the process of entering the application, the School District notified the SLD that it had discovered that in its Block 5 funding request, it had entered the monthly pre-discount cost of 10 Mbs Leased WAN Service to 91 schools, \$84,677.04, as the annual cost. The School District pointed out that the correct figure was plainly detailed in the Description of Services attachment that had been submitted with its mailed application form (see Exhibit C – Attachment G), and, in fact, it had received a funding commitment for a comparable amount in the previous funding year. It asked the SLD to adjust the funding request to reflect the correct amount, which was clearly specified elsewhere in its application, and SLD staff advised the School District that the Receipt Acknowledgement Letter ("RAL") would reflect the full amount requested.

On April 27, 2002, within two weeks of the date when the SLD issued a RAL for this application, the School District tried once again to correct the error, this time using the mechanism that the SLD specifically set up after the program's first year to correct clerical-type errors that were discovered before they were memorialized in a funding commitment decision letter that would require a formal appeal to correct. This was not a case of an applicant manufacturing a request for additional money out of whole cloth. This was not a case of an applicant that had mischaracterized Priority One and Priority Two services on its application and now wanted to change how those services were designated. The School District had, in fact, applied correctly and its back-up information clearly demonstrated what the exact costs were.

However, when the School District received its Funding Commitment Decision Letter, the result was the same as if it had committed the grossest possible violation of the E-rate rules—its request for the correct amount of funding was denied. As a result, it was denied access to \$782,415.78 worth of funding, receiving only one-twelfth of the appropriate commitment.

The WCB contends that both 'SLD procedures and the Commission's precedents support the SLD's refusal to grant the correction in this case." We will deal with each in turn, demonstrating why neither should be used as a basis for rejecting this application.

III. DISCUSSION

A. TO ADMINISTER THE SCHOOLS AND LIBRARIES PROGRAM
EFFICIENTLY AND EFFECTIVELY, THE SLD NEED NOT IMPOSE
UPON APPLICANTS AN UNBENDING, IRON-FISTED NO-MISTAKE
POLICY WITH RESPECT TO FORM 471-BLOCK 5 ERRORS.

1. The Myth of the Demand Projection

In rejecting the School District's appeal, the WCB stated that the SLD's policy of disallowing any kind of correction at any stage of the process "enables SLD to apply our funding priority rules properly in situations where demand exceeds the annual funding cap." As we write this, in January 2003, the SLD is still wrestling with the precise value of the eligible requests that were submitted *one year ago* in January 2002.

When the schools and libraries program was created, the Commission had no basis for predicting what the level of demand for funds would be and how much should be collected from the carriers to meet that demand. Under the 1997-98 regulations that laid the foundation for the schools and libraries funding mechanism, the fund administrator was directed to provide the Commission with an estimate of the demand represented by the applications that had been submitted during the annual filing window. As a practical matter, in every funding year since the 1999 Funding Year, demand has, in

fact, exceeded the annual cap of \$2.25 billion, both in actual requests and the SLD's early projection of them. So far, in every year of the program, there has been sufficient money to support Priority One requests. The only issue has been where the threshold for approved Priority Two requests would ultimately fall.

As a practical matter, the SLD is, in fact, stymied until it has actually data-entered all the applications. It cannot set a threshold for internal connections until it knows the precise outside value of the applications on its plate and has reviewed enough applications to know the parameters of applications it could approve. If, in a future funding year, the volume of Priority One requests was so high that they alone would use up all the available funding, the SLD would still need to know more about the actual size of eligible requests before it could issue funding commitments. In 2001, the value of approved funding requests actually totaled only roughly half of the amount that the SLD had initially projected for the categories that turned out to be funded in the 2001 funding year. For the 2002 funding year, it appears that the original projection may be off by even a greater factor, based on the likely volume of requests that could be rejected.

Significantly, in the 2001 funding year, the funding year at issue here, the funding projection was subject to even more variation, up and down, than is typically the case. The SLD first projected, on February 2, 2001, that \$5.52 billion had been requested by schools and libraries. On February 28, it revised that number upward to \$5.787 billion. Although the SLD said that that figure was based on actually "counting the dollars requested" in the applications, it acknowledged that the number was an estimate that was "likely to decline." (After reporting its initial demand projection to the Commission, and for reasons it has declined to make public, the SLD closely guards the precise level of demand represented by the applications it has processed.)

On March 7, 2001, the School District's representative first brought the clerical error to the attention of the SLD staff. Almost two months after the SLD was first notified of the School District's error—on May 1, 2001—the SLD publicly reported that it had informed the Commission that it had made a \$219 million "data-entry" error of its

own, further reducing the demand projection. In addition, it said that \$374 million worth of applications had also been rejected because of missing or late certifications and/or attachments.

On August 31, 2001, nearly four months later, the SLD announced that it had determined it would be able to fund all requests for internal connections filed by applicants with discount rates of 90 percent. However, on October 22, 2001, USAC Vice President George McDonald told the quarterly meeting of the Schools and Libraries Committee of the Universal Service Administrative Company's board that the SLD had discovered it had made a significant error in rejecting applications and that "\$187 million could move inside of the window because of attachment issues."

In other words, *nearly six months after* the School District contacted the SLD to try to correct its own mistake—an attempt that was rebuffed because of the SLD's requirement for an accurate projection—the SLD had to revise the number upwards by close to \$200 million! The fact that the SLD was, in fact, able to set a threshold and continue to issue funding commitments—despite understanding the magnitude of such an error so late in the process—suggests that providing applicants an opportunity to correct clerical errors very early in the process would not actually negatively impact the SLD's ability to process applications.

While a demand projection may be a useful tool for helping applicants predict their chances of funding, and to provide the FCC with some guidance on funding and collection issues, the experience of the 2001 funding year makes clear that the SLD's demand projection is a target that is constantly moving—both up and down. Although the SLD now has five years of experience to help guide it, for all practical purposes it is impossible for the SLD to know how much funding requests will be reduced or rejected until it actually gets in and does the application review. Even then, it must still build in an imprecise contingency for appeals that may ultimately be successful.

2. Proposed Solution: A Reasonable Form 471-Block 5 Policy for Correcting Funding Requests Upward.

In rejecting the School District's appeal, the WCB upheld the SLD's policy of not permitting corrections that would increase the amount of funding sought—with no regard to the circumstances of the case or the timing of the request—because the practice "enables SLD to apply our funding priority rules properly in situations where demand exceeds the annual funding cap."

We are willing to concede that at some point in the process, the SLD needs to know that its projection of the total amount of requested funding will go no higher. That date, we contend, should be three weeks after the last RAL (Receipt Acknowledgement Letter) is issued, providing applicants the opportunity to demonstrate if they can, as the School District could in this case, that its back-up information had, in fact, detailed a figure that was larger, and permitting that number to be corrected.

Going forward, the three-weeks-after-RAL standard should provide no practical problem for the SLD. In fact, the SLD publicly reported, at its September 9-10, 2002 training session for state-level E-rate coordinators, that 87 percent of Form 471 applications were filed online for the 2002 funding year, a percentage that should grow as the SLD tries to encourage more and more applicants to take this approach. It is our understanding and experience that the RAL is generated as soon as the SLD succeeds in matching up an online Form 471 with the pertinent certification documentation. SLD officials said that for the 2003 Funding Year, they will be able to begin issuing RALs three weeks *before* the filing window has even closed. (Coupled with the new "e-cert" procedure, the SLD should, in fact, be able to issue a growing number of RALs within a matter of weeks, if not days, following the close of the application filing window.)

In fact, under current procedures, it's possible that a RAL could actually be issued before an applicant even submits its Description of Services documentation to the SLD. In the 2001 Funding Year, applicants were required to submit their Description of

Services attachment by the close of the filing window deadline, which the School District did. Under the modified standard that the School District wishes to propose, the SLD would not be required to revise a funding request upward unless an applicant could demonstrate that it had made a clerical error *and* the SLD already had a Description of Services in hand that demonstrated that the correction was clerical in nature, and thus, reasonable.¹

An alternative approach would be to allow applicants to bring this kind of clerical error to the attention of the SLD staff within 60 days of either the submission of their application or the close of the filing window—a standard that the School District would have still met and that mirrors the current timetable for permissible appeals. This approach would ensure that all such clerical corrections would have to be made very early in the process—and at the initiative of the applicant.

A reasonable policy that would protect both the SLD's ability to manage its projection of demand and not penalize an applicant for this kind of clerical mistake would be to specify that applicants would be permitted to revise a funding request upward IF AND ONLY IF:

- a) The correction is clerical in nature;
- b) The correct information is clearly documented in Description of Services materials that the applicant has already submitted to the SLD; and
- c) The request is made within the three weeks currently provided by the RAL for other kinds of corrections (or alternatively within 60 days of application submission or the close of the filing window).

The School District's upwards correction request would satisfy this rigorous three-part test.

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¹ This would have the added benefit of encouraging applicants to submit their Block 5 Descriptions of Service Attachments early.

The truth is, no matter what projection the SLD provides the FCC shortly after the application window closes, that number will continue to move, up and down, in large and small amounts, throughout the whole of the application review cycle.

That has been the case in every application year since the program began. In the case of Funding Year 2001, the year in question in this appeal, the particular circumstances of that year clearly demonstrate that the funding projection can move in dramatic ways and as a result, the SLD's current standard is an arbitrary one. Nor does the WCB serve the policy goals of the program by adhering to a strict liability standard so rigidly—particularly when it serves no regulatory purpose and was adopted without proper discussion by stakeholders on its potential impact on the program.

- B. IN ADDITION TO BEING DISTINGUISHABLE, THE CASES CITED IN SUPPORT OF THE FORM 471-BLOCK 5 STRICT LIABILITY POLICY SUPPORT THE SCHOOL DISTRICT'S CONTENTION THAT THE SLD'S DECISION IN MARCH 2001 NOT TO CORRECT ITS DATA ENTRY ERROR WAS A MISTAKE, AS THE SLD FAILED TO FOLLOW THE COMMISSION'S POLICY THEN IN EFFECT FOR CORRECTING DATA ENTRY ERRORS, INCLUDING INADVERTENT UNDERSTATEMENTS OF REQUESTED FUNDING.
 - 1. In the cases the WCB cited, the equitable balance failed to tip even slightly in the applicants' favor, making it much easier for the Commission to adopt a harsher standard than it otherwise may have been inclined to accept.

The Commission has decided several cases involving requested corrections of funding commitments. However, to the best of our knowledge, no other case has combined the same compelling set of facts as this one—namely, notice to the SLD of the clerical mistake early on, before the RAL and even before the completion of data entry, an application virtually flawless in every other respect, and the correct amount of the funding request evidenced clearly in the Block 5 Description of Service attachment. Note that under either of the very strict, but forgiving, standards that we have proposed

elsewhere in this Request for Review, the SLD would have permitted the School District to correct its mistake. Indeed, the facts in this case differ so much from the facts in every other published case of which we are aware, that it is the *only* one in which the applicant's request to correct its request upwards would have satisfied all of the criteria.

For the general proposition that it is appropriate for the SLD not to permit changes that would increase the amount of support requested, the WCB cited *SouthWest Ohio Computer Association*². In that case, the applicant did not attempt to correct its RAL until more than two months after it was issued. Although the applicant also argued that the correct amount was reflected in the attachments to its application, we believe that its tardy response was the basis on which its appeal was correctly rejected.

In another case, *Lake Station Community Schools*³, the Commission again refused to let an applicant increase a funding request. There, the applicant managed to respond within 15 days of the date on its RAL, but there was no suggestion that the original application had included any additional evidence to support a correction upwards.

In *Mettawee Community School*⁴, Mettawee contended that "it was the SLD's responsibility to contact the school in order to correct the school's [Block 5] mistake." There was no evidence to indicate that Mettawee had tried to correct its application at the time the SLD issued its RAL, and for this and other good reasons, the SLD refused to make the correction. We agree that the SLD should not be expected to go searching for potential corrections, but rather, if a clerical-type correction is brought to its attention early enough in the process, it should be able to make the correction if the back-up documentation is consistent with the corrected amount.

² Request for Review by the South West Ohio Computer Association, (Wireline Comp. Bur. Rel. August 27, 2002).

³ Request for Review by Lake Station Community Schools, Lake Station, Indiana, (Wireline Comp. Bur. rel. September 20, 2002).

⁴ Request for Review by Mettawee Community School, West Pawley, VT, at para. 5 (Wireline Comp. Bur. rel. May, 2002).

In Genesee Intermediate School District⁵, the applicant tried to make a Block 5 change roughly 2½ weeks after receiving its RAL. Timing, however, was not the issue. Instead it appears that the applicant's objective in Genesee was to secure more funding than it had originally intended, perhaps as an afterthought. That, of course, it could not do. Here, in sharp contrast, the School District's objective was simply to set the record straight, to modify an inadvertent data entry error upward simply to bring it in line with the amount of funding that the School District clearly had intended to apply for in the first place.

The Commission also noted in *Genesee* that the applicant had tried to create an entirely new funding request for a vendor that it had failed to include in its application. In addition, the Commission cited multiple errors that the applicant had made, including incorrect SPIN numbers, that contributed to the confusion over the application. Unlike the School District's application, which was correct in all aspects other than the number supplied in a blank in one part of the application, the Genesee district's requests were, by comparison, apparently riddled with errors.

In the *Visitation Academy*⁶ decision, the issue involved a discrepancy in the calculation of the annual charge, based on a monthly charge (the school dropped a zero in the annual charge, entering \$108.00 instead of \$1,080.00). The applicant failed to respond to the RAL and blamed the SLD for not bringing the discrepancy to its attention. In rejecting the appeal, the Commission explained that the SLD should not be expected to highlight such discrepancies to applicants. Thus, when it failed to respond to a RAL that cited the incorrect figure, Visitation lost its opportunity to rectify the error, which, in that case, was clearly the correct result.

We agree with the Commission that the SLD properly refused to change any of the applicants' Block 5 entries in the cited cases, as the facts in each of them warranted

⁵ Request for Review by Genesee Intermediate School District, Flint, Michigan (Com. Car. Bur. rel. June 4, 2001).

⁶ Request for Review by Visitation Academy, Bay City, Michigan (Com. Car. Bur. rel. March 14, 2001).

that outcome. The School District does not deserve to be lumped in with that group, nor the fate that befell them. The School District made a single clerical error in an application that was otherwise error-free. Unfortunately, mistakes happen. Applicants make them; the SLD makes them. In the context of Block 5 data entry errors, the controlling questions should be what did the applicant do next, how quickly did it do it, and is there evidence elsewhere in the application to support what the applicant claims is the amount of funding it had intended originally to data-enter. The School District discovered its mistake very early in the process and immediately took the initiative to try to get it corrected. Its Block 5 Description of Service attachment was clear proof that it had made a data entry error, that the pre-discount cost that it had entered in Block 5 could not possibly have been correct, that the Description of Service included the correct pre-discount cost, and that it was *not* seeking more funding than it had applied for originally.

2. The correction the School District attempted to make on March 7, 2001 was permissible under the Commission's policies in effect at that time; much later came a decision to "tighten-up" the rules.

It is worth noting that the Commission has, over time, apparently agreed with the SLD to narrow its Block 5 change policy without giving the applicant community the opportunity to comment. In the *Visitation* decision, which was issued March 14, 2001, only seven days *after* the School District first tried to contact the SLD proactively to correct its clerical mistake, the Common Carrier Bureau explained its then more liberal position on correcting "cost calculation errors" *upwards* as follows⁷:

We see no unfairness in placing the ultimate burden of detecting such cost calculation errors upon the applicant, particularly given that the FCC Form 471 RAL is provided specifically to grant applicants a predecision opportunity to detect such errors. Because it was Visitation's miscalculation which caused it to be approved for a smaller discount amount than that to which it may have otherwise been entitled, and because there is no evidence in SLD's records that Visitation attempted to correct this error at any time prior to approval, we conclude that SLD correctly affirmed its funding commitment based on the total pre-

⁷ Visitation at para. 11.

discount cost reported in the applicant's FCC Form 471. [Emphasis added].

Clearly, the Commission envisioned in *Visitation* that there would be situations where applicants would timely discover and report to the SLD mistakes that they had made in Block 5 that would require the SLD to increase the amount of funding originally entered there. And for that purpose, the Commission observed, the SLD had, in fact, provided a remedial vehicle—namely, the RAL process. The *Visitation* applicant was unsuccessful, not because the Commission's policy did not permit the SLD to correct upward the amount of funding data-entered in Block 5, but rather, because the facts simply did not support the approval of the appeal.

In *Marion County Public Schools*⁸, released approximately one month later, the issue involved the kind of clerical mistake that the School District made here, namely, confusing monthly and annual amounts. There, the Commission ultimately concluded that it *should* approve the appeal. In that decision, issued a month after the School District's first attempt to contact the SLD, the Common Carrier Bureau wrote:

[The applicant] must file an FCC Form 471 to notify the Administrator of the services that have been ordered . . . and an estimate of funds needed to cover the discounts to be given for eligible services. This information *is generally provided in Block 5* of the FCC Form 471. Using information provided by the applicant in its FCC Form 471, SLD issues a Receipt Acknowledgement Letter (RAL), which summarizes the applicant's funding requests and *provides a limited period for the applicant to make corrections*. [Emphasis added]

The opinion suggests that the Commission recognized that pertinent information, including even funding-related information, might appear outside of the Block 5, per se, and that the Commission, consistent with its decision in *Visitation*, fully intended to provide a limited window for applicants to correct certain kinds of mistakenly low funding entries.

Elsewhere in the *Marion* decision, the Bureau emphasized, in connection with a dollar amount that the applicant had entered incorrectly, that the purpose of the RAL was to notify applicants of any Form 471 data entry errors that they or the SLD may have made and to give them the opportunity to correct those mistakes at that time. The Bureau quoted the following directly from the RAL instructions⁹:

If the information reported in this letter is at variance with the information that you provided in your application, please write to us at the address listed at the bottom of this letter under "Questions About this Letter. ... If we (or you) have made errors in Form 471 data entry ... the Receipt Acknowledgement Letter offers you the opportunity to make corrections. . . .

Significantly, the Commission never qualified the type of Form 471 data entry funding errors that it would permit an applicant to correct during the narrow, RAL window of opportunity, until the release of *SouthWest Ohio Computer Association* ("*SouthWest Ohio*") on August 27, 2002, almost one and a half years after the School District first had asked the SLD to correct its data entry error. *SouthWest Ohio* is notable because it is the dividing line between the the *Visitation* line of cases, which allowed upward funding request corrections, and the new rule, which did not. In *SouthWest Ohio*, before abandoning the old rule, the WCB had this to say about it ¹⁰:

It is true that, in decisions such as the Visitation Order, funding corrections requests have been denied where no correction had been made prior to the issuance of a funding commitment decision letter. However, these decisions did not conversely establish that a request to correct an amount of funding upward, if made prior to the funding commitment decision, *would* always be granted. (Emphasis in original.)

¹⁰ SouthWest Ohio Computer Association at para. 12.

⁸ Request for Review by Marion County Public Schools, Ocala, Florida at para. 2 (Com. Car. Bur. rel. April 24, 2001)

⁹ *Marion County Public Schools* at para 4.

Note that the WCB stated very clearly that the *Visitation* line of cases does not stand for the proposition that requests to correct funding amounts upward "would always be granted" -- the clear inference being that the Commission's rule previously had been to permit funding amounts to be corrected upward, but not in every case.

Thereafter, in the *Oklahoma City Public Schools Order*, the WCB made it perfectly clear that, in *Southwest Ohio*, it had fully intended to abandon completely its long-standing RAL correction rule and to replace it with the SLD's new, strict liability "policy." More specifically, it decided to uphold expressly the SLD's "policy" of never, under any circumstances, allowing an applicant to correct upwards a data entry error. The WCB discussed the Commission's old *Visitation* policy and, in turn, the new SLD-driven policy, as follows:

However, the Bureau found that these decisions did not conversely establish that a request to correct an amount of funding upward, if made prior to the funding commitment decision, *would* be granted, (emphasis in original) and that, to the contrary, the Bureau had expressly upheld SLD's policy of not permitting changes to an application that increased the amount of support requested. (Emphasis added).

Therefore, at the time the School District contacted the SLD, first at its own initiative and then in response to its RAL, its basis for seeking a correction was squarely in line with the standard for rectifying Block 5 data entry errors that was then in effect. Therefore, the SLD should have approved it. It was not until much later that the Commission tightened the standard, presumably at the request of an SLD that was nervous about giving applicants' ANY way to increase a funding request, no matter the nature of the correction and how early in the process an applicant tried to make it.

¹¹ *OCPS Order* at para. 9. In *the OCPS Order*, the WCB narrowed or, more likely, corrected the statement of the *Visitation* rule that it had made in *SouthWest Ohio* that applicants should not expect that timely requests to correct funding amounts upward "would always be granted" to "would be granted."

C. THE COMMISSION SHOULD TAKE ADVANTAGE OF THE NAPERVILLE "TOTALITY OF THE CIRCUMSTANCES" TEST TO REMEDY CLERICAL ERRORS THAT APPLICANTS TIMELY ATTEMPT TO CORRECT.

In its Request for Review, the School District contended that the "totality of the circumstances" test that the Commission announced in its oft-cited *Naperville Order*¹² should be applied in this case to determine whether, under the totality of the circumstances, fundamental fairness warranted a different result. (See Exhibit C at p. 8 "The Commission's Rule of Reason"). The WCB refused the School District's request on the narrow grounds that "the *Naperville Order* addressed only the appropriate standard for reviewing whether an application is properly rejected for failure to satisfy SLD's minimum processing standards." *OCPS* at para. 12. Such a narrow application of a rule that was designed to insert a measure of fairness and common sense into a process that has become, unfortunately by necessity, increasingly bureaucratic and rigid does the program, its objectives and supposed beneficiaries, a tremendous disservice.

In *Naperville*, the Commission concluded that a very technical violation of the SLD's Minimum Processing Standards related to discount worksheet information was not enough to warrant rejecting the applicant's entire funding request. The Commission observed that its "primary objective," which was "to ensure that schools and libraries benefit from the schools and libraries universal service support mechanism," would not be served under the circumstances by such an outcome. *Naperville* at p.5. The Commission's discussion of the policy considerations underlying its *Naperville* decision demonstrates that the Commission believed very strongly that it needed to pave a road to the "right" result where technical rule violations were concerned.

The same policy considerations that the Commission had to grapple with in *Naperville* come into play whenever an inadvertent clerical error alone leads to the loss of E-rate support. Just as in the case of a minimum processing standards violation, an

"uncorrectable" mistake leads automatically to the loss of funding. And, just as in the case of a minimum processing standards violation, denying support to an otherwise deserving applicant solely because of an "uncorrectable error," without first examining the "totality of the circumstances," does nothing to further the Commission's "primary objective" of ensuring that applicants "benefit from the...universal support mechanism." Accordingly, it follows logically and makes sound policy sense to apply the principles of *Naperville* here, where an otherwise diligent applicant stands to forfeit \$768,867.45 in E-rate support due to a single, inadvertent clerical error that the record shows unequivocally was nothing more than that.

In *Naperville*, the Commission outlined the relevant policy considerations that it needed to balance against the applicant's mistake. All of them, except for the introduction of a new form, are applicable equally both to clerical and minimum processing standards mistakes: ¹³

- Whether the administrative cost of accepting the application under the circumstances would be relatively minimal.
- Whether the omitted information could easily have been discerned by the
 SLD through examination of other information included in the application.
- Whether the application was otherwise substantially complete.

In the School District's case, the administrative cost of correcting the mistake would have been virtually nothing. (*See* Exhibit C - Request for Review at pp. 8-12 for a detailed discussion of *Naperville* and its application to the facts in this case). Indeed, the School District had attempted to correct its error while the application was still in data processing. As the RAL process is designed specifically to uncover and correct clerical errors, the SLD would incur no additional costs by correcting funding requests upwards that satisfy the very narrow standards that we have proposed elsewhere in this Request for Review.

¹² Request for Review by Naperville Community Unit School District 203 (rel. February 27, 2001).

As we have already discussed at length, the correct amount of monthly funding that the School District intended to request was set forth clearly and unambiguously in the Block 5 attachment. (See Exhibit C – Request for Review, Exhibit G). That attachment listed each school in the district along with the monthly cost of 10Mbs Leased WAN Service to that school. The total monthly cost of service to all of the schools in the district, \$84,677, appeared at the bottom of the page. That was the amount that was entered inadvertently into the *annual*, rather than the monthly, pre-discount cost field in Block 5. Thus, the SLD easily could have confirmed the proposed amount of funding that the School District had *actually* intended to record in Block 5 for Leased WAN Service simply by looking at Block 5 and the Block 5 Attachment. As the School District was requesting discounted service for twelve months, it was perfectly evident that a mistake had been made and what the exact amount should be.

Finally, there is no contention that the School District's application was deficient in any other respect or that it failed to furnish the SLD with all of the information that it needed to review its requests. It was neat, and it was complete, and every other request was funded in full. Therefore, pursuant to the sound, sensible, common-sense standards that the Commission enunciated in *Naperville*, the SLD should be directed to fund the School District's request at the level it intended and which its application (Block 5 Attachment) otherwise supports.

D. THE WCB REFUSED INCORRECTLY TO CONSIDER THE SCHOOL DISTRICT'S SUPPLEMENTAL FILING AS IT WAS BASED ON NEW INFORMATION.

On December 5, 2001, the School District filed a supplemental filing. In this filing, the School District noted that sometime in August, 2001, the SLD apparently had revised its funding projection upwards by \$187 million, after acknowledging that it had made a mistake in processing applications. The magnitude of this error, generally referred

¹³ See Naperville at pp. 6-7.

to as "the Pink Postcard" problem, a reference to a large volume of applications that were incorrectly dismissed at the Minimum Processing Standards stage, was not reported in non-invitation-only forums until October 22, 2001, at the quarterly meeting of the Schools and Libraries Committee of the Universal Service Administrative Company Board of Directors. (Although it is possible that the figure was reported on conference calls of state Erate coordinators, the applicant was not privy to those invitation-only sessions.)

This fact demonstrated that very late in the application review process, the SLD was, in fact, able to revise its funding projection upwards by a substantial amount. The School District believes that this calls into question the SLD's assertion that it cannot make provision for simple clerical corrections very early in the process. The School District was not privy to the details and magnitude of the SLD's own upward revision at the time it submitted its appeal on September 5, 2001—although it's possible, even likely, that the SLD was itself aware of the figure at that time. Because this piece of information did not become publicly available until late October, the School District could not have included it in an appeal that was due in early September 2001. Hence the WCB erred when it refused to consider the supplemental filing because it "was submitted after the expiration of the 30-day period established by the Commission's rules for requests for reviews."

IV. REQUEST FOR WAIVER OF THE COMMISSION'S RULES

WAIVING THE COMMISSION'S RULES IS APPROPRIATE BECAUSE THE RATIONALE BEHIND THE SLD'S BLOCK 5 CORRECTION POLICY, ADMINISTRATIVE NECESSITY, DOES NOT APPLY TO THE SPECIFIC FACTS IN THIS CASE, MAKING THE APPLICATION OF IT NEITHER JUST, EQUITABLE, NOR IN THE PUBLIC INTEREST.

Waiver of the rules under 47 C.F.R. § 1.3 "is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the

public interest than strict adherence to the general rule." In Request for Review by Lynwood Unified School District, 15 in circumstances far less compelling than those present here, the Commission granted a waiver of the service extension deadline to "increase the likelihood that [the school district] may successfully utilize discounts available from the schools and libraries universal service mechanism." In Lynwood, the Commission concluded that waiving the rules would serve the public interest.

We believe that the Commission should instruct the SLD to modify slightly its current policy on Block 5 corrections to permit applicants to correct a funding request upward at the RAL review stage (or, alternatively, within 60 days of application submission or the close of the filing window) if they have met the criteria that we have outlined elsewhere in this appeal. Under this difficult, but fair, test, the School District would be permitted to make the correction it sought to make in March 2001. However, if the Commission is unwilling to do that, we believe that in light of the unique circumstances surrounding this particular case, and the continual readjustment, up and down, of the 2001 demand figure, the Commission should provide a waiver of its rules in this instance and instruct the SLD to issue a revised funding commitment to the School District. As previously demonstrated, because of the extent of the SLD's own upward revisions of its funding projections in the 2001 Funding Year, and the School District's very early notification of its clerical error, the SLD could have easily revised its working projection to permit the school district to revise a clerical error. A waiver of the rules in these circumstances is clearly in the public interest.

 $^{^{14}}$ See Request for Review by Lynwood Unified School District at p. 2 (rel. Oct. 8, 2002), 15 Lynwood at p.3.

V. CONCLUSION

The School District's appeal involves absolutely no violation of program rules. Instead, a School District serving a low-income population wanted to continue to use the discounts that had enabled it to provide its schools with high-speed Internet access—precisely what the E-rate program was designed to do. A clerical error was brought to the attention of the SLD staff as early as it possibly could. If the SLD can find a way to adjust its demand projection in August to accommodate its own \$187 million error, we believe that the totality of circumstances in this case provides ample justification for the SLD to be able and willing to correct a clerical error of \$782,415.78 that was brought to its attention nearly six months before that—and four months before the Commission set the 2001 funding cap and the SLD started issuing funding commitments.

Further, we dispute the WCB's assertion that in the case of the School District, "none of the information in the Block 5 reflects this higher amount." The Description of Services is, in fact, Item 21 of Block 5, and thus it is a formal part of the application, not an afterthought. In fact, failure to eventually submit the Item 21 attachments would lead the SLD to reject an application.

Further, it's possible that a funding request amount specified in Item 23 could be revised upward in the course of application review if the SLD discovered that the applicant had not calculated its discount rate accurately. That, in fact, may happen in the review of Funding Year 2003 applications as the SLD may be forced to manually adjust the discount rates submitted by many library applicants (some up and some down) due to a new method for calculating library discount rates.

Accordingly, for all of the above reasons, the School District requests that the Commission reverse the WCB's decision and remand this matter to the SLD with directions to fund fully the funding request in issue, FRN 663320.

Respectfully submitted on behalf of

OKLAHOMA CITY PUBLIC SCHOOLS

Orin R. Heend

Funds For Learning, LLC Representative, Oklahoma City Public Schools 2111 Wilson Blvd. Suite #700 Arlington, VA 22201 703-351-5070

cc: L. Jolynn Craig Oklahoma City Public Schools 900 N. Klein Oklahoma City, OK 73106

Before the Federal Communications Commission Washington, DC 20554

In the Matter of)	
Request for Review of the Decision of the Universal Service Administrator by)	
Oklahoma City Public Schools Oklahoma City, Oklahoma)	File No. SLD-262187
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.)	CC Docket No. 97-21

ORDER

Adopted: November 15, 2002

Released:

November 18, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

- 1. Before the Telecommunications Access Policy Division (Division) is a Request for Review filed by Oklahoma City Public Schools (OCPS), Oklahoma City, Oklahoma. OCPS seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). OCPS asserts that SLD awarded an incorrect amount on one of OCPS's Funding Year 2001 requests for discounts under the schools and libraries universal service mechanism. For the reasons set forth below, we deny the Request for Review.
- 2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

Request for Review of the Decision of the Universal Service Administrator by Oklahoma City Public Schools, CC Docket Nos. 96-45 and 97-21, Request for Review, filed September 5, 2001 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ See Request for Review at 1-2. Previously, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

discounts for eligible telecommunications services, Internet access, and internal connections.⁴ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

- Receipt Acknowledgement Letter (RAL), which summarizes the applicant's funding requests. The applicant may make certain types of data corrections to its request during the two-week period after SLD issues the RAL. Corrections that are permitted at this time include changing contact information, reducing the amount of requests included in an application, changing the service provider identification number if the original service provider has merged with or been acquired by the new service provider, and "unbundling" or "splitting" a funding request that incorrectly combined two requests. Conversely, SLD does not permit changes that increase the amount of support requested, or that request services not initially requested.
- 4. At issue is Funding Request Number (FRN) 663320, which requested discounted telecommunications services. On Block 5 of OCPS's FCC Form 471 for FRN 663320, OCPS specified an eligible monthly pre-discount charge of \$7,056.42, a total pre-discount amount (for

⁴ 47 C.F.R. §§ 54.502, 54.503.

Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); 47 C.F.R. § 54.504(b); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (Universal Service Order), as corrected by Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), affirmed in part, Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999) (affirming Universal Service First Report and Order in part and reversing and remanding on unrelated grounds), cert. denied, Celpage, Inc. v. FCC, 120 S. Ct. 2212 (May 30, 2000), cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co., 120 S. Ct. 2237 (June 5, 2000), cert. dismissed, GTE Service Corp. v. FCC, 121 S. Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁷ See Form 471 Receipt Acknowledgement Letter, Schools and Libraries Division, Universal Service Administrative Company, Funding Year 4: 07/01/2001-06/30/2002 (Receipt Acknowledgement Letter or RAL).

⁸ RAL at 3 (corrections must be submitted "within 2 weeks of the date of this letter.").

⁹ Id. at 2; see also SLD website, < www.sl.universalservice.org >.

¹⁰ RAL at 2; see also Request for Review by SouthWest Ohio Computer Association, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-230441, CC Dockets No. 96-45 and 97-21, Order, DA 02-1976, para. 3 (Wireline Comp. Bur. rel. August 27, 2002) (SouthWest Ohio Computer Association Order).

Request for Review at 1; FCC Form 471, Oklahoma City Public Schools, filed January 11, 2001 (OCPS Form 471), at 11-12.

twelve months of service) of \$84,677.04, a discount rate of 84%, and a resulting funding request of \$71,128.71. OCPS asserts that the actual monthly rate is \$84,677.04, and that the total amount of support should therefore be \$853,544.49. OCPS asserts that the figures on its Block 5 were the result of its staff mistakenly entering the monthly pre-discount cost of \$84,677.04 as the total pre-discount cost, and calculating all the other Block 5 figures based on this initial clerical error. If

- 5. OCPS's FCC Form 471 was submitted on January 11, 2001, and SLD began the data entry of the FCC Form 471 on January 24, 2001. On March 7, 2001, before SLD had completed data entry and issued an RAL, OCPS contacted SLD personnel and informed them of the error in the requested amount. To support its contention that the amount was a clerical error, OCPS pointed to a service description attached to the FCC Form 471 that stated that the total monthly recurring cost for the service was \$84.677. It requested that SLD adjust the amount of funding requested in FRN 663320 accordingly.
- 6. OCPS asserts that subsequent contacts with SLD led OCPS to believe that the requested correction would be made, but when OCPS received the RAL, it discovered that the listed total pre-discount amount of FRN 663320 was still the uncorrected amount of \$84,677.04. OCPS then made further post-RAL attempts to have the amount of FRN 663320 increased, but these attempts were also unsuccessful. On August 7, 2001, SLD issued a Funding Commitment Decision Letter granting FRN 663320 in the amount of \$71,128.71. On September 5, 2001, OCPS then filed the pending Request for Review.

¹² OCPS Form 471 at 11-12.

¹³ Request for Review at 2.

¹⁴ *Id*.

¹⁵ See OCPS Form 471 (specifying application "Create Date" of January 24, 2001).

¹⁶ Letter from Orin Heend, Funds for Learning, to Schools and Libraries Division, Universal Service Administrative Company, filed March 7, 2001.

I Id.

¹⁸ *Id.*; Request for Review at 3-4.

¹⁹ *Id.* at 4.

²⁰ *Id.* At 4-5.

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Steve Washam, Oklahoma City Public Schools, dated August 7, 2001 (Funding Commitment Decision Letter), at 6.

²² OCPS also filed a Supplemental Filing raising additional arguments for overturning SLD's decision. See Request for Review of the Decision of the Universal Service Administrator by Oklahoma City Public Schools, CC Docket Nos. 96-45 and 97-21, Supplemental Filing, filed December 5, 2001 (Supplemental Filing). However, because the Supplemental Filing was submitted after the expiration of the 30-day period established by the Commission's rules for requests for review, we do not further consider it. See 47 C.F.R. § 54.720.

- 7. In its Request for Review, OCPS argues that, under SLD's procedures and the Commission's prior orders, SLD may not refuse to correct a Block 5 funding request where the applicant has made a timely effort to correct the mistake and the correct information appeared elsewhere in the application.²³ However, we find that SLD's procedures and the Commission precedents support SLD's refusal to grant the correction in this case. As noted above, SLD's established practice is that applicants may not obtain corrections to a submitted application that increase the amount of funding requested.³⁴ The Wireline Competition Bureau (Bureau) has repeatedly reviewed and upheld SLD's disallowance of such corrections, even when the correction was requested prior to the issuance of the funding commitment decision letter or the RAL.²⁵ The Bureau has found that this practice "enables SLD to apply our funding priority rules properly in situations where demand exceeds the annual funding cap."²⁶ Here, OCPS's requested change to its FRN undeniably increased the amount of funding, and so was properly disallowed.
- 8. OCPS argues that, under the *Visitation Academy Order*, corrections made within the two-week period following the issuance of the RAL must be accepted.²⁷ OCPS also argues that its request should have been granted under the *Marion County Public Schools Order*, which granted a correction request that increased an amount that had been specified in Block 5.²⁸ OCPS also argues that the correction should be granted because the correct amounts were specified in the description of service attachments.²⁹
- 9. The Bureau rejected identical arguments in the SouthWest Ohio Computing Association Order.³⁰ The Bureau noted that, in decisions such as the Visitation Academy Order, funding correction requests have been denied where no correction had been made prior to the

²³ Request for Review.

²⁴ See, supra, para. 3.

²⁵ See SouthWest Ohio Computer Association Order, para. 10; Request for Review by Genesee Intermediate School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-151960, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 11820, paras. 8-9 (Com. Car. Bur. 2001) (Genesee Order).

²⁶ SouthWest Ohio Computer Association Order, para. 12 (citing the Genesee Order).

²⁷ Request for Review at 6 (citing Request for Review by Visitation Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-147758, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5469 (Com. Car. Bur. 2001) (Visitation Academy Order)).

²⁸ Request for Review at 7 (citing Request for Review by Marion County Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-138811, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 8761 (Com. Car. Bur. 2001) (Marion County Public Schools Order)).

²⁹ Request for Review at 6, 10-11.

³⁰ SouthWest Ohio Computer Association, para. 12.

issuance of a funding commitment decision letter.³¹ However, the Bureau found that these decisions did not conversely establish that a request to correct an amount of funding upward, if made prior to the funding commitment decision, *would* be granted, and that, to the contrary, the Bureau had expressly upheld SLD's policy of not permitting changes to an application that increase the amount of support requested.³²

- 10. The Bureau also stated that, in the *Marion County Public Schools Order*, a correction that increased the amount of funding was allowed only because the actual Block 5 submitted by the applicant included cost information that supported the increased amount requested.³³ Specifically, the total annual costs on the Block 5 reflected the higher amount, while the monthly amount requested the lower figure that was originally entered by SLD.³⁴ In this case, however, although there may be information reflecting the higher amount in the attachments, none of the information in the Block 5 reflects this higher amount. SLD therefore correctly followed its general policy of disallowing correction requests that increase the amount of funding requested.
- Block 5 amount should be granted where the correct amount was specified in the description of service attachments.³⁵ The Bureau concluded that, in order for the program to run efficiently, it was administratively necessary for SLD to rely solely on the cost and funding amounts that applicants entered in Block 5.³⁶
- 12. OCPS argues that, in the *Naperville Order*, the Commission applied a "totality of the circumstances" test to determine whether the application rejection in that case was proper, and that we should apply a similar test to the denial of the correction request here. ³⁷ However, the *Naperville Order* addressed only the appropriate standard for reviewing whether an application is properly rejected for failure to satisfy SLD's minimum processing standards. ³⁸

³¹ *Id*.

 $^{^{32}}$ Id

³³ Id.; see also Marion County Public Schools Order, para. 7.

³⁴ SouthWest Ohio Computer Association, para. 12 (citing Marion County Public Schools Order, para. 3).

³⁵ *Id.* at para. 9.

³⁶ *Id.* at para. 8.

³⁷ See Request for Review at 8-12 (citing Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032, paras. 16-17 (2001) (Naperville Order)).

³⁸ *Id*.

Because the instant case does not involve a minimum processing standards rejection, the *Naperville Order* is inapplicable.³⁹

- 13. OCPS also argues that, under SLD's appeal review procedures, it may grant an appeal when the applicant includes erroneous information in the application but has correctly listed the proper information on another part of the FCC Form 471. OCPS argues that this standard of review directly supports granting relief here. 41
- 14. Even assuming that this SLD procedure is applicable to the general case, it is not the standard of review that SLD applies to the specific context of requests for corrections that increase funding. Rather, SLD flatly prohibits such corrections, and as noted, the Bureau has repeatedly upheld this prohibition.
- ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Oklahoma City Public Schools, Oklahoma City, Oklahoma, on September 5, 2001 IS DENIED.
- 16. IT IS FURTHER ORDERED that the Request for Review filed by Oklahoma City Public Schools, Oklahoma City, Oklahoma, on December 5, 2001 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division

Wireless Competition Bureau

³⁹ Because the "totality of the circumstance" test is inapplicable, we do not discuss whether the many circumstances to which OCPS refers would support relief under such a test. *See* Request for Review at 11-12.

⁴⁰ Request for Review at 9-10.

⁴¹ *Id*.

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC

In the Matter of:	
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
•)
Oklahoma City Public Schools)
Oklahoma City, OK)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)
Changes to the Board of Directors of the) CC Docket No. 97-21
National Exchange Carrier Association, Inc.)

To: The Commission

Chief, Common Carrier Bureau

SUPPLEMENTAL FILING IN SUPPORT OF REQUEST FOR REVIEW

Oklahoma City Public Schools ("School District"), by its representative, submits this supplemental filing in support of its Request for Review, filed September 5, 2001, of the determination of the Schools and Library Division of the Universal Service Administrative Company ("SLD"), reducing the School District's request for universal service support in Funding Request No. 663320.

I. Basis for Supplemental Filing

In its Request for Review, the School District asked the Commission to direct the SLD to adhere to its Receipt Acknowledgement Letter ("RAL") correction rules—rules that the Commission has reviewed carefully in several cases and approved each time. In support of its appeal, the School District explained to the Commission that it had filed a

timely RAL Correction Request supported fully by documentation contained elsewhere in the Form 471, as SLD rules require, but that the SLD completely ignored the School District's filing.¹

In its Funding Commitment Decision, the SLD failed even to mention the RAL Correction Request or any of the other attempts the School District made during the data entry and review process to clarify this FRN. Instead, the SLD issued an uncorrected funding commitment without any explanation. Consequently, in its Request for Review, the School District had no choice but to speculate as to the SLD's rationale.²

We are submitting this Supplemental Filing to the Commission because the School District has received new information that we believe explains the SLD's decision-making process in this case. Based on a recent telephone conversation with USAC Vice President George McDonald and as explained more fully below, the School District now believes that the SLD's reason for ignoring its RAL Correction Request is tied to the SLD's ability to make accurate projections of funding demand. We still do not know, however, why the SLD opted *never* to explain this to the School District in writing. This due process failure alone should be reason enough for the Commission to reverse the SLD's decision in this particular case. In any event, the SLD's explanation comes as a surprise and, we submit, may not be used as a basis to deny an applicant universal service support in these or any other circumstances.

As described in detail in the Request for Review, the School District notified the SLD very early in the application process—in fact, before the SLD had even formally data-entered its Form 471 application—that through a clerical error, the monthly, rather than the annual amount, of its telecommunications circuit charges for Internet access was included in a Block 5 funding request. The Description of Services attachment to this funding request made clear, however, what the correct amount should be. (The School District previously has received funding commitments for the annual cost of these services at the corrected level.) The School District made repeated communications with the SLD to try to get this correction made, including submitting a corrected RAL withintwo weeks of its receipt.

² In its Request for Review, the School District stated that it was "impossible to challenge the SLD's rationale [for failing to adjust the School District's funding commitment] because, if one exists, it is not apparent from the record." Letter from Orin Heend, Funds For Learning, LLC, on behalf of the Oklahoma City Public Schools, to Federal Communications Commission, filed September 5, 2001.

Because the School District did not address this issue in its Request for Review, the purpose of this Supplemental Filing is to explain to the Commission why the SLD's rationale is not persuasive, either generally or in this specific case.

II. The SLD's Rationale

On November 28, 2001, George McDonald telephoned Orin Heend, president of Funds For Learning, LLC, the School District's representative. He was calling in response to a letter that Mr. Heend had sent to him earlier in the week. The letter had expressed continuing concern about the irreversible adverse impact that the SLD's decision was having on the School District's funding and the need, therefore, to resolve it as quickly as possible. Mr. McDonald agreed with the sense of urgency expressed in the letter, and advised Mr. Heend that he had communicated this to the Commission. We appreciate Mr. McDonald's timely and considerate reply and the action he took on the School District's behalf.

Mr. McDonald also explained that the School District made the correct decision in filing a Request for Review with the Commission because the SLD would not adjust Block 5 funding request errors upwards if it did not appear from the face of the form that there was an error. This, Mr. McDonald explained, was because the SLD needed to protect its ability to produce a "demand projection," an estimated level of demand for Errate funds represented by the applications submitted by schools and libraries. This position, as expressed by Mr. McDonald, represents a radical departure from the Commission's position on RAL corrections that it has examined repeatedly and has concluded protects both the objectives and administrative integrity of the schools and libraries program.³

³This position also contradicts the SLD's own guidelines for appeals that it says it is willing to approve: "If the applicant made a mistake in completing the Form 471...and had provided information to SLD either with the application or during PIA review...and when the appeal points out the mistake...and how SLD could have seen the mistake, ... SLD will grant the appeal." See http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp retrieved December 3, 2001.

The position articulated by Mr. McDonald should not go unchallenged, as it represents, in effect, an impermissible exercise of administrative rule making that assigns more weight to an unrealistic demand for clerical precision than to the program's overall policy objectives.

We understand that the SLD must continually monitor the ever-changing level of demand in order to determine which applications it will be able to fund. And we certainly can appreciate the enormity of the SLD's task, and its need to limit the number of "moving targets" with which it is dealing. We also recognize that the Commission has authorized the SLD "to establish procedures for the administration of the schools and libraries support application process in an efficient and effective manner, including procedures for the review of applications and the implementation of the Commission's rules of priority." Nevertheless, the processes that the SLD apparently followed in this case unquestionably contravene the processes that the Commission has previously authorized for making legitimate corrections.

We believe that in its many decisions reviewing the SLD's RAL Correction Rules, the Commission has already drawn a line that both preserves the SLD's operational efficiencies while permitting certain kinds of narrowly defined corrections. We believe that the number of applications requesting upward adjustments that could actually satisfy these rules are, in fact, extremely small. Furthermore, we believe that the particular circumstances and equities in this case, on balance, far outweigh whatever projection needs the SLD may have had earlier in this particular funding year, and thus, no new rule should be applied.

III. Projecting Demand for Funding is an Imprecise Exercise at Best

When the schools and libraries program was created, the Commission had no basis for predicting what the level of demand for funds would be and how much should

be collected from the carriers to meet that demand. Under the 1997-98 regulations that laid the foundation for the schools and libraries funding mechanism, the fund administrator was directed to provide the Commission with an estimate of the demand represented by the applications that had been submitted during the annual filing window. As a practical matter, in every funding year since Program Year Two, the SLD's initial demand projection has, in fact, exceeded the annual cap of \$2.25 billion.

However, the process of making a demand projection is imprecise at best. In Year 4, the funding year at issue here, the SLD first projected, on February 2, 2001, that \$5.52 billion had been requested by schools and libraries. On February 28, it revised that number upward to \$5.787 billion. Although the SLD said that the number was based on actually "counting the dollars requested" in the applications, it acknowledged that the number was an estimate that was "likely to decline." After reporting its initial demand projection to the Commission, the SLD closely guards the precise level of demand represented by the applications it has processed.

On March 7, 2001, the School District's representative first brought the clerical error to the attention of the SLD staff. The requested correction would have required an upward adjustment of \$782,415.78. On April 26, 2001, the School District's representative submitted this same correction, following the prescribed procedure for correcting a Receipt Acknowledgement Letter.

Almost two months after the SLD was first notified of the School District's error—on May 1, 2001—the SLD reported that it had informed the Commission that it had made a \$219 million "data-entry" error of its own, further reducing the demand projection. In addition, it said that \$374 million worth of applications had also been rejected because of missing or late certifications and/or attachments.

⁴ See, for example, Common Carrier Bureau decision in *Boone County School District*, November 29, 2001.

On August 31, 2001, nearly four months later, the SLD announced that it had determined it would be able to fund all requests for internal connections filed by applicants with discount rates of 90 percent. However, we understand that shortly before that, the SLD had discovered that a certain number of applications were apparently incorrectly processed and rejected for failing to submit their certifications and/or attachments by the filing window deadline. Although the demand projection has not been revised publicly since May, Mr. McDonald reported to the Schools and Libraries Committee of the USAC Board of Directors at its October 22, 2001, quarterly meeting that "\$187 million could move inside of the window because of attachment issues."

Additional processing errors on the part of the SLD can, in fact, add to the potential imprecision of its demand numbers. For instance, in Year 1, we know of at least one case in which the SLD failed to data enter a full page of an applicant's Form 471 application – this SLD error involved more than \$500,000 in funding. The SLD restored this funding after a successful appeal. During the Year 2 supplemental window application period, the SLD failed to enter another 21 funding requests, totaling more than \$900,000, on another Form 471 application. In this case, the SLD failed to respond to a corrected RAL, but agreed, on appeal, that these items should be data-entered. In yet another case, involving a Year 2 application, the SLD data entry staff dropped a "zero" from the funding request, reducing the request by a magnitude similar to the amount in the case under appeal. In this case, the SLD did revise the funding request as a result of a corrected RAL submission.

We cite these examples simply to demonstrate that clerical errors can and do occur, and it is possible for the SLD to correct them (at least when the mistake is the SLD's) without jeopardizing the efficiency of its application review or the positive balance of the schools and libraries fund.

While the demand projection may be a useful tool for helping applicants predict their chances of funding, and to provide the FCC with some guidance on funding and collection issues, the experience of the past year makes clear that the SLD's demand projection is a target that is constantly moving—both up and down. Although the SLD now has four years of experience to help guide it, for all practical purposes it is impossible for the SLD to know how much funding requests will be reduced or rejected, until it actually gets in and does the application review. Even then, it must still build in a cushion for appeals that may ultimately be successful.

Further, the experience to date has been that schools and libraries actually used much less funding than they had requested, providing an even larger cushion for appeals and late adjustments than the SLD might have needed to provide in the first place. (We understand that the Commission has, in fact, begun permitting the SLD to "commit" more than \$2.25 billion, based on mutual acknowledgement that USAC will never be called on to actually disburse that much.)

IV. The FCC-Approved Correction Standard Strikes a Reasonable Balance

We agree with the reasonable position on application corrections that the Commission has taken in its appeals decisions to date and believe that the SLD can continue to apply it in a way that will preserve the SLD's need to predict as accurately as possible the volume of funding requests that have been submitted. In short, the policy the Commission has articulated is this:

- Applicants will be permitted to correct clerical errors in a funding request submission when the correct information is clearly provided elsewhere in the application submission, and the application is otherwise correct.
- Applicants will be permitted to make such a correction if they bring it to the attention of the SLD during the formally established process for making such corrections, namely reviewing the Receipt Acknowledgement Letter and faxing back corrections within two weeks. From the applicant's viewpoint, it is not until it receives the RAL that it knows that the SLD has, in fact, accepted its application and completed the data entry process.

If necessary, the RAL instructions could be modified to state that funding requests would be revised upward only if the applicant can demonstrate that the correct amount was clearly listed elsewhere in its application, in either the actual Block 5 submission or in the Description of Services attachment. From an operational standpoint, there is no difference in letting an applicant point out a clerical error by the SLD at the RAL stage and letting the applicant identify its own clerical error at that stage. We believe that the requirement that the correct information be detailed elsewhere in the application is an adequate protection against letting applicants increase their funding requests cavalierly at that point in the process.

We believe that it is unreasonable for applicants to expect the SLD to boost their funding request higher than the amount they originally requested after the RAL review stage has been completed, and particularly after a Funding Commitment Decision Letter has been issued. That position has been enunciated in other Commission appeal decisions on this issue.

V. The School District's RAL Correction Satisfied the FCC-Approved Correction Standard and Should be Granted on that Basis and not Subjected to an Entirely New Standard of Review.

In Year 4, the SLD and the Commission have been forced to address a processing error on the part of the SLD's subcontractors that apparently represented a potential increase of \$187 million in the amount of legitimately submitted funding requests—an error whose magnitude may not have been fully identified until August. It is in this very realistic context that we request the Commission to consider the very unrealistic correction standard that the SLD has indicated its intent to implement.

The Oklahoma City School District's appeal involves absolutely no violation of program rules. Instead, a school district serving a low-income population wants to continue to use the discounts that have enabled it to provide its schools with high-speed Internet access—precisely what the E-rate program was designed to do. A clerical error

was brought to the attention of the SLD staff as early as it possibly could have been. If the SLD can find a way to adjust its demand projection in August to accommodate its own \$187 million error, we believe that the totality of circumstances in this case provide ample justification for it to correct a clerical error of \$782,415.78 that was brought to its attention nearly six months before that—and four months before the Commission set the Year 4 funding cap and the SLD started issuing funding commitments.

We believe that under the Commission's current policy on application corrections, the SLD should be instructed to permit applicants to correct a funding request at the RAL review stage if they have documented the correct amount elsewhere in their application. However, if the Commission is unwilling to do that, we believe that in light of the specific circumstances surrounding this case, and the continual readjustment, up and down, of the Year 4 demand figure, it should instruct the SLD to correct the funding request submitted by the Oklahoma City School District.

Respectfully submitted on behalf of

OKLAHOMA CITY PUBLIC SCHOOLS

December 3, 2001

.....

Orin R. Heend

Funds For Learning, LLC 2111 Wilson Blvd. Suite #700 Arlington, VA 22201 703-351-5070

cc: Debbie Sharp, Executive Director of Finance Services Oklahoma City Public Schools P.O. Box 25428 (900 N. Klein) Oklahoma City, OK 73135-0428

EXHIBIT C

RECEIVED SEP - 5 2001

FEDERAL CO

OMMUNICATIONS COMMISSION	PEDERAL COMMUNICATIONS GO	
Washington, DC		

In the Matter of:)
Request for Review of the Decision of the Universal Service Administrator by)))
Oklahoma City Public Schools Oklahoma City, OK)))
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.) CC Docket No. 97-21

The Commission To:

REQUEST FOR REVIEW

Oklahoma City Public Schools ("School District"), by its representative, hereby seeks review of the determination of the Schools and Library Division of the Universal Service Administrative Company ("SLD"), dated August 7, 2001, reducing the School District's request for universal service support in Funding Request No. 663320.

Statement of the Facts I.

Approximately 40,300 students (77% are eligible for free or reduced price lunch) are enrolled in the School District. These students attend school at 91 sites throughout Oklahoma City. Their access to the Internet is via a leased wide area network.

On August 7, 2001, the SLD issued a Funding Commitment Decision Letter ("FCDL") in connection with FRN 663320. (Attachment A). In that FRN, the SLD granted to the School District only *one* month's worth of support (\$71,128.71) for its leased wide area network, rather than the full twelve months of support (\$853,544.49) that the School District had requested. As discussed in more detail below, the twelve-month amount was readily and unambiguously apparent from the documentation that the School District had included in its Form 471application.

The SLD's single-month funding determination resulted, unfortunately, from a clerical error that appeared originally in one of the School District's Block 5/Form 471 funding requests. The School District tried everything possible, as early as possible, to correct this mistake. It brought the matter to the SLD's attention at the very beginning of the data entry process and again at the Receipt Acknowledgement Letter stage. Even though SLD staff agreed with the School District that the error should be corrected, ultimately, the SLD either failed, neglected, or refused to make the change. We do not know which. Indeed, the answer to that question remains a mystery, as the SLD's FCDL failed to address this keystone issue in *any* respect. Thus, the School District cannot determine whether anyone at the SLD considered this issue seriously before issuing the FCDL. It is impossible, therefore, for the School District to challenge the SLD's rationale because, if one exists, it is not apparent from the record.

The School District first applied for E-rate support for the telecommunications services that are the subject of this appeal ("Leased WAN Service") in Program Year One. That year, the monthly pre-discounted cost for the Leased WAN Service was \$82,800. (Attachment B). The following year, the pre-discounted cost was \$79,200 per month (Attachment C), and in Program Year Three it was \$81,900 per month. (Attachment D). From year to year the annual fee has fluctuated slightly as different school sites have opened and closed.

In Program Year Four, the *monthly* cost of the Leased WAN Service was going to remain in the same price range. According to the service provider, the monthly cost would be \$84, 677. (See Attachment E - Leased WAN Description of Service at p.6: "Total Monthly Recurring: \$84,677").

Unfortunately, on the Form 471, the \$84,677 monthly amount was entered by mistake into the *annual* pre-discount cost field (Block 5, Line 23, Column E). (Attachment F). That mistake, in turn, was carried over into the form's monthly pre-discount cost field (Block 5, Line 23, Column C), where the incorrect annual amount then was divided by twelve. That calculation yielded an absurdly low Leased WAN Service charge of \$7,056.42 per month for leased 10Mbs service for 91 sites, an average of approximately \$78 per month per line. By any objective standard, it was obvious that the dollar amount entered in that field had to have been a mistake. That amount, patently low on its face for a school district of this size and for that amount of bandwidth, was of course only 1/12 of the amount that should have appeared there.

Elsewhere in the Form 471, however, the correct pre-discount cost for the Leased WAN Service clearly did appear. In the tabbed "Service Description" section of the application under a tab labeled "Cox Oklahoma Telecom, Inc. WAN," the School District included a five-page document from the service provider with the heading, "Oklahoma City Public School District Wide Area Network Locations." (Attachment E). That document listed in column format every school in the School District, the service level that every school was to receive, and the monthly recurring charge for that service at that location. More specifically, it showed 91 sites receiving 10Mbs service at \$900 per month per site and a group of special programs receiving 1.544 Mbs DS-1 service at the rate of \$2,777 per month for a "TOTAL MONTHLY RECURRING" (emphasis in original) charge of \$84,677. That amount, obviously, was the amount that was entered by mistake into the annual, rather than into the monthly, pre-discount cost field on the Form 471 (The exact amount on the form actually was four cents more due to a formula embedded in an electronic version of the form.)

After discovering the mistake, which was *before* the SLD had even begun to data-enter any of the Form 471 Block 5 information, the matter was brought immediately to the SLD's attention. A detailed letter along with supporting documentation was faxed to Jon Cruver ("Cruver"), an SLD Problem Resolution supervisor, on March 7, 2001. (Attachment G). John Harrington ("Harrington"), on behalf of the School District, followed up with a telephone call. He explained to Cruver all of the details surrounding the error, pointed to the unambiguous, independent documentation of the

projected cost of the service contained elsewhere in the Form 471, and asked her to make the correction.

Two weeks later, after reviewing the correspondence and considering what Harrington had explained to her, Cruver advised Harrington to contact David Krowll, the data entry specialist assigned to the School District's Form 471, and he did. Harrington reviewed the matter again with Krowll and, on March 21, 2001, faxed to him all of the information and documentation that he had faxed previously to Cruver. (Attachment H). Krowll, in turn, advised him to contact Matthew Banks. Later that day, Harrington spoke with Banks, who instructed him to fax a revised Block 5 that conformed to the service provider's quote of \$84,677 per month. Accordingly, Harrington faxed to Banks a new Block 5 containing the correct monthly amount of \$84,677.00 in Column A, the correct annual pre-discount amount of \$1,016,124.00 (12 months of service at \$84,677 per month) in Column I, and the correct total funding commitment request in Column K. (Attachment I).

It was anticipated as a result of that exchange and after submitting the corrected Block 5 that the correction would be made, but, unfortunately, that proved not to be the case. On April 24, 2001, the School District received a Receipt Acknowledgement Letter ("RAL"), dated April 16, 2001, that did not include the corrected amounts. Consequently, the District made the necessary corrections on the RAL and out of necessity returned it by fax to SLD Data Entry Corrections on April 27, 2001. (Attachment J – including fax activity report).

On May 9, 2001, Cathy Turner ("Turner") called the SLD on behalf of the School District to follow up on the corrected RAL to determine whether the correction had been made. The staff person with whom she spoke, "Michelle," could not answer that question, so she advised Turner to send a fax to SLD Data Entry Corrections requesting a status report on the RAL correction. Turner followed Michelle's instructions and sent a fax that day. Turner explained to the SLD why she was writing and, in addition, specifically requested that someone in Data Entry Corrections either fax or call back with a reply. (Attachment K). No one did.

A week went by, and still no one from the SLD had responded to Turner's fax. On May 17, therefore, Turner tried again. This time she spoke with "Don" in the Client Service Bureau, recounting yet again all of the relevant facts. His reply was much more to the point and matter of fact. According to him, the SLD rarely if ever made data corrections, and even though the School District's funding request was in the "data correction stage," an appeal still would have to be filed. In view of the SLD's RAL correction procedure, which the SLD designed and implemented specifically for the purpose of affording applicants the opportunity to make corrections, his reply was surprising and deeply disturbing.

Thereafter, on August 7, 2001, the SLD issued the FCDL that is the subject of this appeal. (Attachment A).

Because the School District did not know whether it could continue to pay its service provider in full each month without benefit of the discounts, and because discussions had already begun to review what costs, if any, could be cut to salvage the service, a crisis was quickly escalating. The district realized that the recurring services and support it lost each month while an appeal might be under review could NEVER be recovered. For applicants caught in this particular bind, victories on appeal six, nine or 12 or more months down the road are partial at best and Pyrrhic at worst.

Because time, in this case, represents money, the School District's objective was and continues to be to get this matter resolved as quickly as possible - if possible. Therefore, on behalf of the School District, Orin Heend sent an e-mail to top SLD officials to determine whether, under the circumstances, this matter could be resolved quickly via an appeal to the SLD. (Attachment L). A follow-up conversation with a senior SLD staff person made it plain that the SLD felt that it had to adhere to its "first in, first out" policy on managing appeals, no matter how straightforward or complex the issue involved. Faced with the prospect of a delay that could not be predicted and that could run many months, the School District chose to appeal directly to the Commission.

II. Issue

Whether the Commission should direct the SLD to correct the School District's Block 5 funding request and issue an amended FRN.

III. Discussion

Under the SLD's own Form 471 processing procedures and pursuant to standards for correcting clerical errors adopted by the Commission, the SLD may not refuse to correct a Form 471 (block 5) funding request where, as here, the applicant has engaged in a timely, affirmative effort to correct the mistake and the correct information appears elsewhere in the application.

- A. As the SLD's Form 471 processing procedures recognize that applicants may make mistakes in the amount of funding they request in Block 5 of the application, the SLD provides to applicants an administrative tool known as the Receipt Acknowledgement Letter to correct those mistakes during the application review process.
- B. By demonstrating that the correct, monthly cost of the School District's Leased WAN Service was readily available to the SLD in an easily understandable format elsewhere in its Form 471, the School District established that it had made a *bona fide* mistake in its Block 5 funding request that clearly warranted correcting under the Commission's rules.

The "RAL" Process

In Visitation Academy¹, the applicant made a cost calculation error in its Form 471. As a result, the applicant received a much smaller amount of funding than it had anticipated. Unlike the School District, however, the applicant in Visitation Academy did not file a corrected Receipt Acknowledgement Letter ("RAL") with the SLD. Moreover, it failed to raise the issue at any time during the review process. Under those circumstances, the Commission decided, the applicant forfeited its opportunity to correct its mistake. This result, according to the Commission, was perfectly fair:

¹ Request For Review By Visitation Academy, CC Docket Nos. 96-45, 97-21, Order, DA 01-655 (Com. Car. Bur. Rel Mar. 14, 2001)

We see no unfairness in placing the ultimate burden of detecting such cost calculation errors upon the applicant, particularly given that the FCC Form 471 RAL is provided specifically to grant applicants a pre-decision opportunity to detect such errors." (emphasis added)

In stark contrast to the applicant's lack of conduct in *Visitation Academy*, as well as to that of other applicants whose "mistaken dollar amount appeals" have fallen on deaf ears because they too sat on their rights during the application review process, here the School District did everything it conceivably could to correct its mistake. Significantly, it contacted the SLD about the mistake *before* the SLD had even entered the incorrect funding request data into its system. Indeed, the School District, through its representatives, contacted SLD staff repeatedly during the application review process, providing additional documentation and, upon request, even filing a corrected Block 5 funding request. Of course, the School District also filed a corrected RAL. The School District could not possibly have done anything more. Therefore, under its own rules, the SLD should have corrected the mistaken entry in the School District's Block 5 funding request.

A more recent case, Marion County Public Schools⁴, demonstrates further that the SLD failed to follow its own rules. That case affirmed yet again the critical role the RAL plays in the Form 471 application process. Due to an inadvertent error, the applicant in Marion County entered into its funding request a monthly and an annual amount of support that did not add up. Multiplying the monthly amount yielded a total annual funding request of \$319,626, but the applicant confused matters by entering a different dollar amount, \$391,626, in the total annual cost field. As it turned out, the annual amount was correct, but that was not clear from the face of the request. The SLD decided to award the applicant the lower amount, \$319,626. The RAL, however, showed the SLD awarding the higher amount, \$391,626. Consequently, the applicant did not respond to the RAL.

² Visitation Academy at p.4.

³ See, e.g. Request for Review by Roaring Spring Community Library, CC Docket Nos. 96-45, 97-21, Order, File No.SLD-79875, 15 FCC RCD 4504 (Com. Car. Bur. Rel. Oct. 27, 1999); Request for Review by Western Wayne School District, CC Docket Nos. 96-45, 97-21, File No. SLD-107715 (Com. Car. Bur. Rel. July 29, 1999).

⁴ Request for Review By Marion County Public Schools, Order, File No. SLD-138811 (Com Car. Bur. Rel. April 24, 2001)

On appeal, the Commission concluded that the RAL was ineffective because it failed to accomplish its specific purpose. That purpose, the Commission made clear, was to afford the applicant "the opportunity to make corrections" to its Form 471. Accordingly, the Commission granted the applicant's request for review and remanded the case to the SLD for further action, even though it was unclear from the specific request for support exactly how much funding the applicant was requesting.

As a result of *Marion County*, three principles are well settled: (1) the SLD must issue to applicants RALs that accurately reflect the amount of funding that the SLD intends to award; (2) the burden is on applicants to review their RALs and to discover and correct any mistakes; and (3) if applicants discover mistakes in their funding requests and in a timely manner bring them to the SLD's attention, they are entitled to the opportunity to make the corrections. Here, the School District satisfied all of its obligations. It reviewed the RAL, discovered the mistake, and attempted to correct it by filing a corrected RAL. The SLD, on the other hand, failed to fulfill its obligations. For reasons known only to the SLD, it ignored completely the School District's corrected RAL, never even so much as contacting the School District by phone or by e-mail to question the correction. Thus, like the applicant in *Marion County*, the School District was denied the opportunity to make corrections to its Form 471. The result in this case, therefore, should be exactly the same as the result in *Marion County*.

The Commission's Rule of Reason

In Naperville Community School District ⁶, the Commission emphasized that its "primary objective is to ensure that schools and libraries benefit from the schools and libraries universal service support mechanism as contemplated by the statute." Thus, the Commission set forth a "totality of the circumstances" test for determining whether a Request for Review should be granted

⁵ Marion County at p.3.

⁶ Request for Review By Naperville Community Unit School District 203,, CC Docket Nos. 96-45, 97-21, Order, File No. SLd-203343 (Commission Rel. Feb. 27, 2001) at p.5

in cases where the SLD's interest in minimizing administrative costs had to be balanced against the applicant's statutory interest in benefiting from the program. If any test should apply here, that is the one.⁷

In *Naperville*, the SLD rejected the applicant's Form 471 because it failed to conform to the SLD's minimum processing standards. After considering the "totality of the circumstances," the Commission concluded that the SLD should have processed the application. In reaching this conclusion, the FCC emphasized one point in particular, and that was that filling in the missing information on the Form 471 "required merely the ministerial act of repeating a fact readily available and easily discernable elsewhere in the application." That meant, of course, that a detailed SLD review of the application to correct the mistake would not be necessary. The administrative cost of accepting the application in those circumstances, the Commission concluded, would be minimal.

Here, we have exactly the same situation. As described more fully in the bulleted points set forth below and also in the Facts section above, the requisite fact in this case -- the correct monthly recurring charge for the Leased WAN Service -- was readily available to the SLD elsewhere in the School District's application. This is reason enough, we submit, not only under Naperville, but also pursuant to the SLD's own written standards of appellate review, to remand this matter to the SLD for further action. Such a result is not unprecedented. In fact, Methacton School District squarely

⁷ In Marion County, the Commission remanded the case to the SLD apparently for two reasons: (1) because the RAL was ineffective and (2) because the Commission found the applicant's correction credible. Thus, it is unclear whether an applicant that timely requests a correction need show anything more than a good faith effort to correct a bona fide mistake. That showing alone, we submit, sufficiently safeguards the integrity of the program, advances the objective of the program and, at the same time, minimizes any undo administrative burden on the SLD.

⁸ Naperville at p.7

⁹ This case is clearly distinguishable from Request for Review by Scranton School District, CC Docket Nos. 96-45, 97-21, Order, File No. SLD-112318 (Com Car. Bur. Rel. Jan. 7, 2000), where, in contrast, the application was rife with mistakes and inaccuracies and difficult to review. There, the applicant consistently placed monthly projected amounts in both the annual and the monthly fields throughout its application, included projected cost data elsewhere in the application that actually supported, rather than challenged, the accuracy of the allegedly incorrect data, failed to include the correct information anywhere else in the Form 471, and, apparently, never filed a RAL.

¹⁰ In the Service Provider Manual posted on the SLD's web site, the SLD describes four circumstances in which it will grant an appeal. Significantly, number two states, "If the appeal makes it clear the applicant made an error in

supports it:12

Under SLD's procedures SLD may grant appeals when the applicant has correctly listed the proper item on another part of the Form 471. SLD states that, if this case were remanded, it 'would treat this as a data entry error made by the applicant and, since there is evidence in the original file to support the correct item, [it] would grant the appeal.'

In any event, applying the "totality of circumstances" test to the pertinent facts surrounding the School District's mistake in this case leads inevitably to the same conclusion -- that on balance, the objectives of the program are better served by directing the SLD to correct the mistake. In this regard, we direct the Commission's attention to the following relevant facts:

- The School District discovered the mistake in its Form 471 Block 5 funding request extremely early in the application review process and brought it immediately to the SLD's attention, even before the SLD began to data-enter the application. (See Attachment G). If the SLD had made the correction at that time, the administrative cost of correcting the mistake would have been virtually zero.
- Upon request, the School District submitted to the SLD a corrected Form 471 Block 5 funding request.
- In addition, the School District timely filed a RAL that contained the corrected Form 471 Block 5 information.
- Under a typewritten tab in the Description of Service section of the application, the School District provided service provider documentation that set forth clearly and unambiguously the correct total monthly cost for Leased WAN Service throughout the

information provided in or with the application, and SLD could have identified the error by the information on hand during initial review" (emphasis added). www.sl.universalservice.org/vendor/manual/Chapter7.doc (Attachment L)

¹¹ Request for Review by Methacton School District,, CC Docket Nos. 96-45, 97-21, Order, App. No.120123, (Com Car. Bur. Rel. May 17, 2 000) at p. 3

¹² See, also, Request for Review by DeKalb County School System, Order, File No. SLD-153570 (Com Car.Bur. Rel. Sept. 4, 2001) at p.4 ("Our finding is consistent with SLD's policy that, if an applicant made a mistake completing its FCC Form 471 and there was other information contained in the application or provided during the Program Integrity Assurance (PIA) review process that presented the correct information, SLD will grant the appeal so long as the applicant points out the mistake, and demonstrates how SLD could have reasonably ascertained the true nature of the information.")

- district. This simple, yet extremely thorough, documentation included a detailed breakdown and description of charges, including the speed of the service to be provided to each school in the district and the cost of that service at each location.
- To correct the Block 5 funding mistake, no detailed examination of the application was necessary, so the SLD easily could have corrected it. As in *Naperville*, the only action that was required of the SLD was "merely the ministerial act of repeating a fact readily available and easily discernable elsewhere in the application."
- The SLD apparently ignored the School District's RAL, rendering it ineffective and violating its own procedures.
- There are several hundreds of thousands of dollars in E-rate support at stake in this FRN. Thus the SLD's failure to correct the School District's inadvertent mistake in its Form 471 Block 5 funding request obviously is having, and will continue to have, a substantial adverse impact on its ability to benefit from the universal support mechanism. The absence of this critical support is placing a tremendous strain on the School District's ability to pay for its Leased WAN Service. Whether or to what extent the School District will be able to maintain this service without E-rate support remains a day-to-day question. Consequently, Internet access for the entire district is in jeopardy.
- The SLD issued the FCDL to the School District without making the correction, without comment, and without explanation.

Unfortunately, mistakes happen. Unfortunately, they frequently happen in the course of completing complex Form 471 applications. The Commission has recognized this as a fact of regulatory life and, to its credit, has refused to take a narrow, strict liability approach to the problem. Instead, noting that its "primary objective" is the success of the E-rate program, the Commission has decided to examine the totality of the circumstances in each case and to determine, in each instance, where the equity lies and whose interests are greater, the applicant's or the SLD's.

After considering the totality of the circumstances set forth and described above, it is evident that the balance of respective interests tips lopsidedly in the School District's favor. Thus, it should

not be surprising to the Commission that equity too is squarely on the applicant's side, and that limiting the School District to universal support to only <u>one</u> month of Leased WAN Service would be extremely harsh and inequitable. We urge the Commission, therefore, also to weigh the following equitable considerations:

- This economically disadvantaged district school district is precisely the kind of applicant that the E-rate program is supposed to help.
- The School District desperately needs the full \$853,544 in E-rate support to sustain its high-speed leased network through which its students access the Internet.
- The record will show that the School District's application is otherwise complete, neat, well organized, and accurate in every other respect.
- The School District did not receive its RAL until almost two weeks after the date that was printed on it. Nevertheless, the School District timely filed a corrected copy.
- The School District did everything conceivably possible to correct its mistake.
- On the other hand the SLD requested the School District to submit a corrected Block 5 funding request, but for some reason never processed it or contacted the School District concerning it; in retrospect, it appears the SLD requested it for no apparent reason.
- After requesting the corrected Block 5 funding request, the SLD ignored both the matter and the School District each and every step of the way -- from data entry to Receipt Acknowledgement Letter to Funding Commitment Decision Letter.

There have been cases in which applications, in their entirety, have been prepared carelessly. There have been cases where applicants have been cavalier about communicating with the SLD. There have been cases where applicants have not taken advantage of the procedural avenues open them to make changes in their applications. This is not any one of those cases.

REQUESTED RELIEF

For these reasons, the School District requests that the SLD's funding decision in FRN 663320 be remanded to the SLD with directions to correct the funding request in issue to reflect the \$853,544.49 in support that the School District originally requested and, further, to expedite issuing to the School District an amended FRN 663320 for that amount.

Respectfully submitted,

Orin R. Heend

On behalf of Oklahoma City Public Schools

cc: Debbie Sharp
Executive Director of Finance Services
Oklahoma City Public Schools
PO Box 25428 (900 N. Klein)
Oklahoma City, OK 73125-0428

Attachment A

Page 1 of 1

FUNDING COMMITMENT REPORT

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Funding Request Number: 653319 Funding Status: Funded
Services Ordered: Telecommunications Services Provider Name: AT&T Corp.
Services Ordered: Telecommunications Services Provider Name: AT&T Corp.
Services Total Number: 1000-174-2617
Services Total Number: 1161
Services Total Services Total Services Service Service Services Service Provider Name: OneNet
Services Services
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(from Rem 14) Percentage Discount \$0.00 \equiv \$0.00% Armual Prediscount Estimated \$579,600.00 8 Total STT. 200.00 60 Ţ., 15. "Shared" services: All EXCEPT site-specific, internal connections and dedicated ("private line") connections from only one school or library to an ISP or other end user. ; Estimated Monthly Pre-discount 3 SE2, \$00.00 232,600.00 3 Armount Attachment B Estimated One Time Pre-discount Cost € \$41,000.00 8.8 Service Start Dato 16/10/90 16/10/90 E Internal Connections (Shared) Internal Connections (Shared) Telecommunications Services Internal Connections (Shared) Telecommunications Services Telecommunications Services Services or Products 9 Internet Access Internet Access Internet Access and Phone Number: 405-297-6712 Expir-ation Date 0409/91 04/09/03 \$66000 \$66000 3 CONTRACT Award € (pplicable) Contract Number Ξ \mathfrak{S} Contact Person's Name Dr. George H. Kimball 553020000038015 Number for Form 470 on \$1080000008965 which this is (2) Universal Service Control based Block 5: Services Ordered Pare 50'6 Legal Name of Number or Full SLC Service Service Provider 143003575 Provider $\boldsymbol{\epsilon}$ A3002379

Page 1 of 1

and Phone Number: (405) 29, 385

Contact Person. .ume Russell Woodward

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15. "Shared" servic	es: All EACEL I of	in and an	F (4 & 8		(9)	6	Allion	- - -		
(i)	(2)	CON	CONTRACT	-			(8)	6)		
SLC Service	Universal Service	(3)	(4)	(5)			Estimated	Estimated Monthly	Estimated Total	
Provider Number or Full Legal Name of	Control Number for Form 470 on which this is	Contract Number (if	Award Date	Expir- ation Date	Services or Products	Service Start Date	Pre- discount Cost	Pre- discount Cost	Annual Prediscount Cost	Percentage Discount (from Item 14)
Provider	based	appiicauie)			Telecommunication Services	02/01/1999		\$1,250	\$15,000	85%
AT&T Corp.	377740000224994	-	-	-						
14300 135					Internet Access					
					Internal Connections (Shared)					
OneNet	377740000224994				Telecommunication Services					
143015254			900		Internet Access	07/01/1999		\$5,000	\$60,000	85%
		O	04/02/1999		C. In					
					Internal Connections (Snareu)					1
emodely O	917580000211242	01		000000000000000000000000000000000000000	Telecommunication Services	07/01/1999		\$79,200	\$950,400	85%
Telcom, Inc.		೦	04/09/1996							
143005575	-				Internet Access					-
					(F 10)					
					Internal Connections (Snarcu)					

Attachment C

ant's Form Identifier OCPS-PY3-471-01 le Number 405-297-6585

Russell Woodward

oţ

Block 5, page

Block 5: Discount Funding Request(s)

Contact Perso

Make as many copies of this page as necessary, and number the completed pages to assure that they are all processed correctly. Instructions: Use one Block 5 page for EACH service (Funding Request Number) for which you are requesting discounts

			15 Contract Number (if waitebs; use Tr if tarified services, "MTM" if month-to-	
÷	11 Category of Service (only ONE calegory should be checked)		month services as described in Instructions)	ASOU
:	Telecommunications Service O Internet Access O Internal Connections	s O Internal Connections	5	0/4998
		100000000000000000000000000000000000000	27 Allowable Contract Date (mm/dd/yyy, based on Form 470 filing)	02/20/1930
٤	12 Form 470 Application Number (15 dgits) 553080000038013	553080000038015		04/09/1998
1			18 Contract Award Date (mm/doyyyy)	0000170120
÷		143005575	19 Service Start Date (mm/dd/yyy)	11,2000
:	Identification Number (9 agrs)			06/30/2002
Ľ	Cox Oklahoma Telcom, Inc.	Telcom, Inc.	Cox Oklahoma Telcom, Inc.	es. Label this
۲	Service riovides wells	Polyton of the confirm	including a breakdown of components and costs, pius dily leictual	
	You MUST attact Description of description with a	n a description of the serves, an Attachment #, and note no	You MUST attach a description of the Section of the Section of the Section with an Attachment #, and note number in space provided below.	
7	This Service:	B-1		

a. If the service is site-specific (provided to one site and not shared by others), list the Entity Number of the entity from Block 4 Total Charges b. If the service is shared by all entities on a Block 4 worksheet, list the worksheet number (e.g., A-1): One-Time Charges receiving this service: Receiving This Service: **Entity/Entitles** 23 Calculations 22

Attachment # ...

W.	Funding Commitment 5	Annual pre-discount \$ Annual non- How much of Annual engages (from Request amount for eligible recurring charges (F) is ineligible? for one-time charges (E+H) Worksheet) (D x C)	\$ 835,380.00
ſ	% discount	(from Block 4 Worksheet)	85%
p-4	Total program Year	pre-discount \$ amount (E + H)	\$ 982,800.00 85%
×	A olioble res.	Annual non- How much of Aurusa engage pro- pro- freedscount \$ recurring (one the \$ amount in discount \$ amount finne) \$ charges (F) is ineligible? for one-time charges amount (F minus G) (E+H)	
(٥	How much of the \$ amount in (F) is ineligible?	
	×	Annual non- recurring (one- time) \$ charges	
	E	Annual pre-discount \$ amount for eligible recurring charges (D x C)	\$ 982,800.00
ges	Q	# of months service provided in program year	12
Recurring Charges	C	Eligible monthly pre-discount amount (A minus B)	\$ 81,900.00
2	4	How much of the \$ amount in (A) is ineligible?	
		Monthly \$ charges How much of the \$ Eligible monthly (total amount per mount in (A) is pre-discount ineligible? (A minus B)	\$ 81,906.00

Attachment D

FCC Form 471 - September 1999

Page 4 of 6



March 7, 2001

SENT BY: FUNDS FOR LEARNING;

Schools and Libraries Division/USAC Problem Resolution Att: Jon Cruver 3833 Greenway Drive Lawrence, KS 66046

Re

Program Year 4 Data Entry Correction

Oklahoma City Public Schools Billed Entity No. 139831

Applicant Form Identifier:

OCPS-PY4-471-01

Dear Jon:

We just discovered an inadvertent clerical error in the monthly/annual dollar amounts entered in one of the Block 5 funding requests in an Oklahoma City Public Schools' Year Four Form 471 (OCPS-PY4-471-01). Fortunately, the correct amount is indicated clearly on separate documentation that the school district included as part of the same Form 471. Therefore, consistent with FCC precedent regarding permissible Form 471 data entry amendments and to help facilitate the process for all concerned, we request that SLD Problem Resolution management authorize its data entry staff to make the following correction hefore issuing a Receipt Acknowledgement Letter:

As submitted, the amount set forth in Block 5 (page 2 of 7), line 23, column E ("Annual pre-discount \$ amount for eligible recurring charges") is \$84,677.04. (See attachment). That amount is the total monthly, not annual, amount for the telecommunications service, and thus should have been entered in line 23, column A.

Please review the attached Form 471/Attachment Number 2. This is the related Description of Service, together with supporting documentation. (In the original application, the attachment is clearly murked and located easily under the tab labeled "Cox Oklahoma Telecom, Inc.). As you can see, the detailed, five-page document lists every eligible school that will receive high speed data service along with the "monthly recurring" charge for that service at each location. The "total monthly recurring" charge, which appears clearly on the last page of the service provider's quotation, is \$84,677.

Of course, on the Form 471, the \$84,677 monthly amount should have been entered in the monthly recurring charges column, column A. Then, the \$84,677 monthly amount should have been multiplied by 12 (total months of service) to arrive at the correct, annual pre-

Funds For Learning, ELC • www.fundsforloaming.com 2111 Wilson Boulevard, Suite 700 • Arlington, VA 22201 • Ph: 703 351-5070 • Fax: 703.351.6218 229 North Broadway • Edmond, OK 73034 • Ph: 405.341.4140 • Fax: 405.341.7008 SENT BY: FUNDS FOR LEARNING;

discount amount of \$1,016,124. And finally, that amount, \$1,016,124, should have been entered in the annual total recurring charges column, column E. Instead, unfortunately, \$84,677 was divided, rather than multiplied, by 12, and, as you can see, the result of that calculation (\$7,056.42) was entered by mistake in column A.

As the correct monthly amount for the service in issue was plainly evident from the documentation submitted with the Attachment 2/Description of Service, the SLD clearly has authority to make this data entry change. Request For Review by Methacton School District Norristown, Pennsylvania, App. No. 120123, Order, (Common Carrier Bur. rel. May 17, 2000)(applicant may correct a determinative Form 471 data entry error "if the applicant has correctly listed the proper item on another part of the Form 471"). (Copy attached)

Moreover, where, as here, an impoverished (84%) school district's need for one year's (not one month's] worth of E-rate funding to enable it to provide high speed internet access to its students is so high and the administrative cost of making a data entry correction to enable this to happen so low (especially under these circumstances and at this very early stage in the process), the balance weighs heavily in favor of making the change. See Request For Review by Naperville Community Unit School District 203 Naperville, Illino's, File No. SLD-203343, Order, (FCC rel. February 27, 2001)(SLD should balance program objectives against administrative cost when making decisions affecting funding and affirming the propriety of looking elsewhere in an application to fill in omitted information).

Accordingly, on behalf of Oklahoma City Public Schools, we request the SLD to change the following in Form 471 OCPS-PY4-471-01 (a revised Block 5 to reflect these changes is attached):

\$84,677 Column A (monthly charges): no change Column B: Column C (eligible monthly charges): \$84,677 no change Column P: \$1,016,124 Column E (annual eligible charges): no change Columns F-H: \$1,016,124

Column I (total amount) no change Column | (discount) \$853,544 Column K (funding request)

If you have any questions or require any additional information, please contact me at 703-351-5070 of by e-mail at oheend@fundsforlearning.com.

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SENT BY: FUNDS FOR LEARNING; 7033516218; MAR 7-01 6:48PM; PAGE 4

03/02/2081 18:35 4853417888 FUNDSFORLEARNING PAGE 81

01/08/01 MON 11:56 FAX (05 600 6585 COX FIBERNET 200 Park Avenue, Suita 2840 Observation Clay, DX 73102 1405 800-8585 fex NAVE, SUIT 800-8585 fex NAVE

Oklahoma City Public School District Wide Area Network Locations

	ALL BUNGE SCI	pool District Wide al	63 115-117
ļ	CIA LAMILE SE	Service Level	Monthly Recurring
School Name		10 Mbps	s 900
Adams Elementar		10 Mbps	\$ 900
Arcadia Elementi		10 Mbpt	\$ 900
Arthur Elements		10 Mbps	\$ 900
Bolle Isle High So	1	10 Mbps	\$ 900
Bodine Elementi	1	10 Mbps	\$ 900
Britton Element Buchanan Elem	i	10 Mbps	\$ 900
Capital Hill Ele	4	10 Mbps	\$ 900
Capital Hin His		10 Mbpt	5 900
Classon High 8	1	10 Mbps	\$ 900
Cleveland Eles		10 Mbps	\$ 900
Independence	1	10 Mbps	\$ 900 \$ 900
Columbus Ele	ı	10 Mbps	\$ 900
Coolidge Elec	nentury	10 Mbps	\$ 900
Creston Hills	1	10 Mbps	s 900
Dewcy Bleme	en enty	10 Mbps	s 900
Douglas Hig	h School	10 Mbps	s 900
Dunbar Elei	mentary	10 Mbps	

7033518218; MAR-7-01 6:48PM; 3/ 2/01 10:83AM; ->FUNDS FOR LEARNING; #317; FAGE 2 PAGE 5 SENT BY: FUNDS FOR LEARNING; PAGE 02 FUNDSFORLEARNING 405841786B 16:35 COL PIBERNET Ø 003 01/08/01 MON 11:89 FAX 401 500 6565 Monthly Recurring Service Level School Name \$ 900 10 Mbps Edgemere Elementary \$ 900 10 Mbps Edwards Elementary \$ 900 10 Mbps Elsenhower Elementary Emerson Alternative High School 10 Mbps \$ 900 \$ 900 10 Mbps Eugene Field Elementary \$ 900 10 Mbps Filmore Elementary \$ 900 10 Mbps Van Buren Elemen ary \$ 900 10 Mbps Garden Oaks Elementary \$ 900 10 Mbps Gateway Academy MS \$ 900 10 Mbps Gatewood Elementary \$ 900 10 Mbps Green Pastures Elementary \$ 900 10 Mbps Harding MS \$ 900 10 Mbps Hawthorne Elemontary \$ 900 10 Mbps Hayes Elementary \$ 900 10 Mbps Heronville Elementary \$ 900 10 Mbps Hillcrest Elementary \$ 900 10 Mbps Hoover MS \$ 900 10 Mbps Horace Mann Elementary \$ 900 10 Mbps Independence School \$ 900 10 Mbps

10 Mbps

10 Mbps

Jackson MS

Jefferson MS

John Marchall High School

Attachment G

\$ 900

\$ 900

Page 4 of 19

HEGETYED: 3/ 2/01 10:54AM; ->FUNDS FOR	7033518218; MAR-7-01 R LEARNING: #317; FAGE 3 FUNDSFORLFARNING	PAGE 03
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		Service Lovel	Monthly Recurring
School Name		10 Mbps	s 900
Johnson Elementary		10 Mbps	\$ 900
Kaiser Elementary		10 Mbps	\$ 900
Lafayette Elementar	¥	10 Mbps	\$ 900
Lee Elementary			\$ 900
Linwood Elementat	4	10 Mbps	\$ 900
Longfellow Elemen	tary	10 Mbps	s 900
Madison Elementa	rý	10 Mbps	s 900
Mark Twain Elem	entary	10 Mbps	s 900
Martin Luther Ki	Jr. Elem.	10 Mbps	\$ 900
Monroe Elementa	1	10 Mbps	s 900
Moon MS		10 Mbps	\$ 900
Nichols Hills Eler	neutary	10 Mbps	\$ 900
North Highland	Llementary	10 Mbps	
Northeast High S	crool	10 МЪря	2000
Northwest Class	en HS	10 Mbps	\$ 900
Onkridge Eleme		10 Mbps	\$ 900
Parker Element		10 Mbps	5 900
Parmeles Eleme		10 Mbps	\$ 900
Pierce Element	1	10 Mbps	\$ 900
Polk Elementa		10 Mbps	\$ 900
Prairie Quean	Į.	10 Mbps	\$ 900
Prairie Queen	4	10 Mbps	\$ 900
Kattham Troits			

Contact: Stave Washam (405) 297-6758

BY: FUNDS FOR LEARNING;	7033516218; -FUNDS FOR LEARNING; #G17;	MAR-7-01 6:49PM; PAGE 4 DRLEARNING	PAGE 7 PAGE 04
03/02/2881 18:35 48534176 8/01 MON 11:59 PAI 405 600 651	DOB STRUCKT		⊠ 008
		onthly Recurring	EALLY #900012
School Name	10 Mbps	2 300	
Quail Creek Elementary		\$ 900	
Raucho Village Etementar	y 10 Mbps 10 Mbps	\$ 900	33
Ridgeview Elementary	10 Mbps	\$ 900	
Rockwood Elementary	10 Mbp*	\$ 900	Oriakoma City Pub to Schools
Rodgers MS	10 Mbps	\$ 900	
Roosevelt MS		\$ 900	<u>.</u>
Sequoyah Elomenta y	10 Mbps	5 900	E
Sequoyan Excursion	10 Mbps		U .
Service Center Admin	DIME • A SAlbus	\$ 900	<u>တ</u>
Shields Heights Bleme	ntary 10 Mbps	s 900	i i
i	10 Mbps		5
Shilder Elementary	10 Mbps	9 900	
Southeast High School) ·	\$ 900	
Southern Hills Eleme		\$ 900	©
,	16 MOUI		100
Spencer Elementary	40 MIDHS	\$ 900	G G
Stand Watte Elemen	zen 3	\$ 900	lev
i e	10 Mpps	+ 000	
Star Elementary	10 Mbps	\$ 900	
Stonegate Element	ату	\$ 900	Ē
Taft MS	10 Wpbs	\$ 900	£
	10 Mbps		©r (1871 - Sheve Washelm (405) 297-0758
Telstar Elementar	10 MD03	\$ 900	97
The Research Co	utar	\$ 900	. 61

10 Mbps

US Grant High School

Webster MS

\$ 900

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	Service Level	Monthly Recurring
School Name	•	\$ 900
West Nichols Hills	10 Mbps	\$ 900
Western Village Elementary	10 Mbps	s 900
Westwood Elementary	10 Mbps	s 900
Wheeler Elementary	10 MDps	s 900
Willard Special Center	10 Mbps	•
	10 Mbps	. 8 900
Willow Brook Elementary	10 Mph	\$ 900
Wilson Elementary	1,544 Mbps	\$ 2777
* Academy Programs		\$84,677
TOTAL MONTHLY RECUR	KINU:	

^{*} proposed locations to receive DS-1 level of service.

FCC Form 471 ~ October 2000

Perpe 4 of 6

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ORDER

Adopted: May 16, 2000

Released: May 17, 2000

By the Common Carrier Bureau:

1. The Common Currier Bureau has under consideration a Letter of Appeal filed on October 22, 1999 by Methacton School District, Norristown, Pennsylvania (Methacton), seeking review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). Methacton seeks review of SLD's denial of its application for discounts for telecommunications services under the schools and libraries universal service support mechanism. For the reasons set forth below, we remand Methacton's appeal to SLD for further review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections. The Commission's rules provide that, with one limited exception, an eligible school, library, or consortium must seek competitive bids for all services eligible for support. The Commission reasoned that competitive bidding would ensure fiscal responsibility and would be the best means for ensuring that eligible schools and libraries are able to receive services at the most competitive

¹ Letter from Robert F. Holly, Methacton School District, to Secretary, FCC, dated October 22, 1999 (Letter of

Appeal).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

^{3 47} C.F.R. §§ 54.502, \$4.503.

^{4 47} C.F.R § 54.504(a).

DA 00-1046

- The Commission's competitive bidding rules require that an applicant submit to rates.5 the Administrator a completed FCC Form 470, in which the applicant lists the services for which it seeks discounts. The Administrator must post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a commitment to a selected service provider. The Commission's rules provide a limited exemption from the 28-day competitive bidding requirement for applicants that have pre-existing contracts as defined by the Commission's rules. After the FCC Form 470 has been posted for 28 days, and the applicant has selected a service provider, the applicant must submit to the Administrator an FCC Form 471, which lists the services that have been ordered.
 - Item 10 in Block 3 of the FCC Form 470 directs the applicant to check the box if it has a pre-existing contract. If an applicant checks Item 10, SLD will not post its FCC Form 470. If an applicant does not check the box, SLD will post the applicant's Form 470. Here, Methacton filed two separate Forms 470. In its first Form 470, Methacton checked Item 10 in Block 3, indicating that it had a pre-existing, binding contract for telecommunications services, and therefore SLD did not post Mothacton's first Form 470. In its second Form 470, in which Methacton sought support for telecommunications services, Internet access, and internal connections, Methacton did not check Item 10 in Block 3, thereby indicating to SLD that it did not have an existing, binding contract. Accordingly, SLD posted Methacton's second Form 470.
 - Methacton subsequently filed a single Form 471 in which it referenced only the first, non-posted Form 470, and indicated, by listing a "C" in the appropriate box, that all of the services listed in the Form 471 would be received pursuant to a new contract. As noted above, under the Commission's rules, an applicant must have had a Form 470 posted for 28 days prior to

⁵ See Federal-State Joint Board on Universal Service, CC Docket No.96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997) Universal Servica Order), as corrected by Federal State Joint Board on Universal Service, CC Docket 96-45, Erratt, PCC 97-157 (rel. June 4, 1997), affirmed in part, reversed in part and remanded in part, Texas Office of Public Willing Council v. FCC, 183 F.3d 393 (5° Cir. 1999) affirming Universal Service Order in part and reversing and remanding on unrelated grounds), petitions for cert. pending.

^{6 47} C.F.R. §§ 54. 504(b)(1), (b)(3).

⁷ 47 C.F.R. § 54.511(c). Under SLD's procedures, even applicants that have pre-existing contracts are required to wait 28 days before filling their Form 471.

⁴⁷ C.F.R. § 54.504(c)

⁹ Respectively, USCN 142430000155751 and USCN 586470000159312.

The SLD subsequently discovered that Methacion would be receiving its telecommunications services pursuant to a tariff, not a contract, and therefore Mothacton should have indicated a "T" instead of a "C" in its Form 471. The 28-day posting requirement applies to requests for service pursuant to a contract or a tariff, and therefore SLD would have denied Methacion's application even if Methacion had correctly indicated that it was ordering telecommunications services pursuant to a tariff. See 47 C.F.R. § 54.504(b)(3).

DA 00-1046

entering into a new contract with a service provider. Because Methacton referenced only the first, non-posted Form 470, SLD denied Methacton's application for failure to comply with the Commission's 28-day posting requirement.

- 6. At the Bureau's request, SLD has reviewed this case further, and has discovered that SLD may be able to grant Methacton relief. Along with its Form 471 application, that SLD may be able to grant Methacton relief. Along with its Form 471 application, that SLD may be able to grant Methacton relief. Methacton submitted Optional Pre-Discount Cost Calculation grids for each of the services that it requested in support of its discount cost calculations. The telecommunications services grids correctly reference the second, posted Form 470, indicating that Methacton intended to reference the second Form 470, not the first Form 470, in its Form 471.
- 7. Under SLD's procedures SLD may grant appeals when the applicant has correctly listed the proper item on another part of the Form 471. SLD states that, if this case were remanded, it "would treat this as a data entry error made by the applicant and, since there is remanded, it "would treat this as a data entry error made by the applicant and, since there is evidence in the original file to support the correct item, [it] would grant the appeal." Accordingly, based on SLD's discovery of the reference to the second, posted Form 470 in Methacton's Form 471, we conclude that it is appropriate to remand this matter to SLD for further review. 16
 - ACCORDINGLY, IT IS ORDERED, pursuant to authority delogated under sections 0.91, 0.29, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that the appeal filed by Methacton School District, Norristown, Pennsylvania, on October 22, 1999 IS REMANDED to SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey Deputy Chief, Common Carrier Bureau

¹¹ Letter from Ellon Wollingen, SLD, to Magalic Roman Salas, FCC, filed March 30, 2000, at 1-2 (SLD Letter).

¹² Ses id.

¹³ See id.

¹⁴ SLD Letter at 2.

¹⁵ Id.

¹⁶ We note that it is unclear from the record why Methacton filed two Forms 470. In any event, because SLD has discovered, with respect to all funding requests at issue here, references in Methacton's Form 471 to the posted, second Form 470, we believe that it is appropriate to remand this matter to SLD for further review.

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			Federal Communica	tions Com	mission	F	CC 01-73
•			Befor Federal Communic Washington,	ations Com	mission i		
	In the Mat	ter of)			
	Universal by Naperville School D Napervill Federal-S Service	Service Adi	a Decision of the ninistrative Company)))) File))) (CO	No. SLD-203 Docket No. 9	6-45	
			O	RDER			
	Adopt	ed: Februai	22, 2001		Released: I	February 27, 20	001
	by Napa decisi Compa applica	erville Com on by the Sony (USAC) tion under t	ion: In this Order, the Commission has under consideration a Request for Review filed formulated the Commission of the Universal Service Administrative as Schools and Libraries Division (SLD) of the Universal Service Administrative C or Administrator) that returned, without consideration, Naperville's certified the schools and libraries universal service support mechanism for failing to be the schools and libraries universal service support mechanism for failing to be consistent with SLD's minimum processing standards. For the reasons of the provider of of t				
	school	BACKGR 2. Un 1s, libraries, 1st for eligi	OUND der the schools and librarie and consortia that include ble telecommunications se	es universa eligible sch rvices, Inte	l service suppo nools and libra ernet access, a	ad internal cor	mections.
	Letter Comm. Letter Naper	from Eric Mi Isslon, filed Ju	litz, Naperville Community Unity 1, 2000 (Request for Reviews and Libraries Division, University Unit School District 203, dat	t School Dist	rict 203, to the Fo	mnany to Marty	,andia

To receive discounts for eligible services, an eligible school or library "shall . . . submit a completed FCC Form 471 to the Administrator." The FCC Form 471 requires the applicant to provide specific information about the service for which a discount is sought. Applications filed during the filing window are deemed simultaneously filed. The filing window for the 2000-01 funding year (Year 3) opened on November 10, 1999, and closed on January 19, 2000. Applicants requested discounts in excess of the program funding cap during the Year 3 filing window." As a result, SLD considered only those applications filed during the window pursuant to the Commission's funding priority rules.

3. The FCC Form 471 is broken up into "blocks" that group related or interdependent requests for information, called "items," together. ¹⁰ The application form is designed to enable SLD to determine efficiently whether the applicant meets statutory requirements and our implementing rules. For applications involving more complex requests, the applicant may need to complete a given block several times with different responses. When an applicant reproduces a block multiple times in the same application, each reproduced block is considered a separate worksheet." When completing multiple worksheets applicants are instructed to number the worksheets, e.g., A-1, A-2, A-3.

⁴⁷ C.F.R. § 54.504(c),

See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471) (attached as Appendix A). On the FCC Form 471, the applicant records data used by SLD to evaluate the eligibility for discounts of the sorvices received and the entitles receiving them, as well as to determine the applicant's priority to receive a discount for a particular request and the discount available to the applicant if the discount is granted. Specific information requested on the FCC Form 471 identifies, for example, the applicant, the individual entities (i.e., particular schools and libraries) that will be receiving services; the vendors, key terms of contracts between vendors and the applicant, including pricing and length of contract; and which entities will be receiving what services included in the application.

⁶ The Commission's rules establish a window to be determined by SLD. See 47 C.F.R. § 54.507(c). Commission rules also establish funding priorities for those requests filed during the window. See 47 C.F.R. § 54.507(g).

⁷ See SLD website, SLD Announces Availability of New Forms, http://www.sl.universalservice.org/whatsnew/ 101999.asp.

⁸ SLD website, SLD President Announces First Funding Wave for Year 3, http://www.sl.universalservice.org/ whatsnew/042000.asp.

^{9 47} C.F.R. § 54.507(g) The Commission's funding priority rules for applications submitted during the filing window provide that, for all discount categories, requests for telecommunications services and for internet access shall receive first priority for the available funding while requests for installation of internal connections and other nonrecurring costs receive lower priority. To the extent that funds are not available to provide discounts to all internal connections, the Commission's rules prioritize support for schools and libraries receiving the highest discount and proceeding downward; in other words, the most disadvantaged entities receive the highest priority.

¹⁰ FCC Form 471.

¹¹ FCC Form 471; Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, ONB 1060-0806 (September 1999) (FCC Form 471 Instructions).

4. Consistent with the Commission's rule requiring applicants to submit a "completed FCC Form 471 to the Administrator," SLD utilizes what it calls "minimum processing standards" to facilitate the efficient review of the thousands of applications requesting funding. These minimum processing standards are designed to require an applicant to provide at least the minimum data necessary for SLD to initiate review of the application under statutory requirements and Commission rules. When an applicant submits an FCC Form 471 that omits an item subject to the minimum processing standards, SLD automatically returns the application to the applicant without considering the application for discounts under the program. Both the minimum processing standards and the automatic return for failure to comply are explained in a document available on SLD's website, from SLD's fax-on-demand service, and from SLD customer services representatives at its toll-free number.

5. In Year 3, SLD added to the minimum processing standards the requirement that applicants identify the specific entity receiving a service or, if that service is shared by more than one entity, the applicant list the Block 4 workshoet number that identifies the entities sharing the service. The worksheet number was collected in Block 5, Item 22, on the FCC Form 471. SLD alerted potential applicants of the minimum processing standards for Year 3 in a letter sent to schools and libraries before the application process commenced. That letter referred applicants to a document that more fully set forth the revised minimum processing standards for Year 3.

^{12 47} C.F.R. § 54.504(c); see SLD website, Form 471 Minimum Processing Standards and Filing Requirements for FY 3, http://www.si.universalservice.org/reference/471 mps.asp (Minimum Processing Standards).

¹³ Minimum Processing Standards.

¹⁴ Minimum Processing Standards.

primarily because the FCC Form 471 was redesigned for Year 3. In the redesigned FCC Form 471, the Block 4 worksheet generally requires the applicant to list all the entities receiving x service for which discounts are sought. In those situations where an applicant is seeking discounts for a service to be shared by a group of schools which in the district, the worksheet calculates the weighted average discount of those schools which is then applied to the shared service. Where a school district is seeking multiple shared services for different groups of schools within its abared service. Where a school district is seeking multiple shared services for different groups of schools within its district, the applicant mist complete a different Block 4 worksheet for each group, labeling the worksheets "A-1", "A-2", and so forth. In this situation, separate Block 4 worksheets are required because the weighted average discount will vary from group to group. The FCC Form 471 requests that the applicant identify the Block 4 worksheet for a particular group at Item 22 of the Block 5 worksheet used to request the discounted services to be received by that group.

¹⁶ FCC Form 471, Block 5, Item 22.

¹⁷ Letter from Kate L. Moore, Schools and Libraries Division, to School and Library Leaders, dated October 11, 1999 (Year 3 Opening Letter to the Field).

¹⁸ Year 3 Opening Letter to the Field. Moreover, links to the minimum processing standards document appear frequently on SLD's website, which is the method preferred by SLD and most applicants for obtaining information regarding the application process and for obtaining and submitting forms. See FCC Form 471 Instructions at 6 ("You are encouraged to complete and submit this form electronically, online."); SLD website, \$4.72 Billion (continued....)

- 6. Nuperville filed an FCC Form 471 requesting discounted services for Year 3. ¹⁹ In Block 4 of its FCC Form 471, Naperville indicated that it was applying for discounts for shared services to be shared by all schools in the district. ²⁰ In doing so, Naperville explicitly indicated that it did not seek discounts for shared services for different groups of schools. ²¹ Naperville listed 21 schools on its sole Block 4 worksheet, yielding a Weighted Average Discount of 26 percent for shared services. ²² Naperville did not label its Block 4 worksheet with an "A-1", "A-2", or similar label. ²³
- 7. Because Naperville was seeking discounts for six different services, it submitted six copies of Block 5 one for each discount request included in the application. ²⁴ Each Block 5 was identical with respect to the items relevant here. On each Block 5, Naperville indicated that the percentage discount from Block 4 (i.e., the Weighted Average Discount) was 26 percent. ²³ On each copy of Block 5, however, Naperville failed to answer Item 22, which asks that the applicant identify by worksheet number the Block 4 worksheet listing the entities to receive the service if the service is shared. ²⁶
- 8. Naperville filed its FCC Form 471 on January 19, 2000, the final day of the Year 3 filing window. Tocause Naperville failed to complete Item 22 of Block 5 with respect to each of its six requests for discounts, SLD sent a letter to Naperville indicating that its application had failed to meet the minimum processing standards, and returned Naperville's application. Because Naperville submitted its incomplete FCC Form 471 on the final day of the Year 3 filing wirdow, SLD was unable to issue the minimum processing letter to Naperville

(Continued from previous page)

Requested for E-Rate in Year 3, http://www.sl.universalservice.org/whatsnew/022000 asp (noting that nearly 80 percent of Year 3 applications were submitted electronically).

19 FCC Form 471. Naperville Community Unit School District 206, filed January 19, 2000 (Naperville Form 471).

20 Naperville Form 471 Block 4, Item 10a.

21 Naparville Form 471 Block 4, Item 10a.

22 Naperville Form 471 Block 4, Items 10b, 10c.

13 Naperville Form 471, Block 4.

24 Naperville Form 471, Block 5.

23 Naperville Form 471, Item 23j.

Naperville Form 47, Block 5, Item 22; Administrator's Decision. For services that are to be provided to one site, rather than shared a second blank in Item 22 asks the applicant to identify by entity number of the school or other site to receive the service. Because Naperville was seeking shared services, that portion was properly left blank.

27 Napaville Form 47

²⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Marty Barnicle, Naperville CUSD 203 dated May 15, 2000.

before the close of the Year 3 filing window. Therefore, Naperville refiled its application after the close of the window. On May 26, 2000, Naperville refiled its application, including the previously incomplete items, and requested that SLD treat its application as having been filed within the filing window. On June 14, 2000, SLD issued its decision, stating that it could not consider Naperville's request for waiver of the Year 3 filing window and advising Naperville to file its request with the Commission. Naperville filed the instant Request for Review with the Commission on July 11, 2000.

II. DISCUSSION

- 9. At the outset, we emphasize that our primary objective is to ensure that schools and libraries benefit from the schools and libraries universal service support mechanism as contemplated by the statute. For purposes of considering this Request for Review, this means we must balance the need to minimize administrative costs, while expediting fair and efficient review of applications. With that objective in mind, we consider the circumstances surrounding SLD's return of Naperville's FCC form 471 for failure to meet SLD's minimum processing standards.
- for Review. As described below, we believe as a general matter that minimum processing standards can serve the important purpose of minimizing the administrative costs of the program. Notwithstanding that fact, however, we conclude that the omission of a response to Item 22 does not merit return of Naperville's entire application under the totality of the circumstances presented here. Specific factors that weigh against such return in this instance include the possible confusion resulting from the redesign of the FCC Form 471 and its impact on the minimum processing standards; the specific request at issue was new to the application; the information omitted in Item 22 is easily discerned from the remainder of Naperville's FCC Form 471; and the substantial completeness of the remainder of Naperville's FCC Form 471.
- 11. In Year 3 of the program, SLD received more than 36,000 applications. As administrator of the schools and libraries universal service mechanism, SLD incurs significant additional administrative costs by reviewing and processing applications that fail to include information essential to their evaluation under the mechanism's rules. Under Commission rules, SLD's administrative funds are drawn from the same pool from which support is distributed to

²⁹ FCC Form 471, Naperville Community Unit School District 203, filed May 26, 2000; Request for Review at 3.

Administrator's Decision. SLD treated this refiled application as a request for a waiver of the Year 3 filing window, which SLD refused to consider. Administrator's Decision. Although SLD treated Naperville's refiled application as a request for a waiver of the filing window deadline, we are not obligated to treat its Request for Review as such. As discussed below, by granting Naperville's Request for Review, we conclude that SLD erred in returning Naperville's nitial application without consideration, given the circumstances presented here.

³¹ Request for Review

³² SLD website, Website Lotter, http://www.sl. universalservice.org/whatsnew/012000.asp.

Federal Communications Commission

applicants.³³ Any additional costs incurred in the administration of the program, therefore, directly reduce the funds available for eligible schools and libraries. As such, and consistent with the Commission's rule requiring applicants to submit a "completed" FCC Form 471, SLD's minimum processing standards provide an efficient means to minimize unnecessary administrative costs by reducing the number of substantially incomplete applications that SLD must review and process. In that context, Item 22 of Block 5 is used because it confirms the discount assigned to the entity or entities receiving the requested service. In many instances, without that information, an essential determination—confirmation of the discount assigned to the requested service—cannot be made and the application cannot be processed. Where applicants are seeking discounts on multiple services for different groups of schools in the same application, this information is critical to determine what discount applies to the various services. Against this backdrop, we conclude that it is appropriate for SLD to require the information requested by Item 22 and for SLD to return applications that fail to provide this information in any form.

- 12. We nevertheless conclude that Naporville's application did not merit return given the totality of the circumstances presented here. We base our decision on several factors. The FCC Form 471 was redesigned extensively for Year 3.14 Although in the most general sense the information requested in Item 22 had been requested in previous years, the Year 3 form requested the information in a substantially different manner in order to permit SLD to more easily identify relevant facts. Given that Item 22 was a new information request on the Year 3 form, some applicants might misunderstand what the appropriate response to Item 22 would be. Moreover, it is not clear whether applicants understood the impact this redesign had on the minimum processing standards.
- have easily discerned the information omitted in Item 22 in this application from the other information in the application. After reviewing Naperville's FCC Form 471, we find that Blocks 4 and 5 of Naperville's application provided the necessary information for SLD to conclude with reasonable certainty what the omitted response to Item 22 was without requiring a detailed review of the application. First, on Block 4, Naperville indicated that all schools in the district would be receiving the same shared services, and that there were no requests for different shared services for different groups of schools.³⁵ Accordingly, if the funding request on Block 5 was for shared services—which SLD could have determined from Naperville's response to Item 23j on

^{33 47} C.F.R. § 54.715(d).

SLD redesigned the FCC form 471 in Year 3 to better isolate information important to the processing of funding requests. The form used in prior years invited responses that often did not permit complete review of the underlying funding requests without substantial additional analysis by SLD reviewers or contact with the applicant for further information. The new form, when properly completed, greatly reduces this work as compared to the form used in Years 1 and 2 because more aspects of the review may be automated and fewer requests for additional information from applicants are necessary.

³⁵ Nuperville Form 477, Block 4, Item 10a.

Federal Communications Commission

Block 5—the only appropriate response to Item 22 would have been worksheet A-1. Moreover, because the 26 percent recorded on each Block 5 matches exactly with the Weighted Average Discount shown in Naperville's only attached Block 4, SLD could have determined that the funding request on the Block 5 worksheets referred to the group of school's identified on Naperville's Block 4 worksheet. Por these reasons, SLD could have easily determined that the only response on Naperville's Item 22 would have been to refer to the only attached Block 4 worksheet. In these circumstances, completing Item 22 required merely the ministerial act of repeating a fact readily available and easily discernable elsewhere in the application.

- Naperville completed every other item on its application for which a response was appropriate. There is no indication that Naperville intended to deceive or mislead SLD by the omission. Nor do we believe that Naperville lacked a sufficient response to Item 22 because it failed to exercise proper diligence in ordering services for which it could make effective use. Rather, Naperville provided sufficiently complete answers to the remainder of its FCC Form 471 to permit the ready discernment of the response that Naperville should have provided to Item 22. Except for the inadvertent omission of a response to Item 22, Naperville's FCC Form 471 reflects the diligence and good faith we expect from applicants.
- 15. Based on these facts, we conclude that, given the totality of the circumstances, Naperville's FCC Form 471 did not merit return. The administrative cost of accepting Naperville's application under these facts are minimal and are outweighed by the objective of cusuring that schools and libraries benefit from the schools and libraries universal service support mechanism as contemplated by the statute. Accordingly, we grant Naperville's request for review and remaid the matter to SLD, so that Naperville's FCC Form 471 may be processed as a timely application. 38 We note that our decision today does not guarantee that Naperville's

SLD could have known that each Block 5 was for a shared service—rather than a site-specific service—because, on Block 5, Naperville indicated a discount percentage of 26 percent. Pursuant to the Commission's implementing rules, only an application for shared services provides the necessary circumstances under which a school or school district would be eligible for a 26 percent discount. This is because, under the schools and libraries universal service mechanism, schools and libraries determine the discount for which they are eligible by consulting the "discount matrix" adopted by the Commission. 47 C.F.R. § 54.505(c). The discount matrix assigns the discount on an eligible entity based on the income level of students (using eligibility for participation in the National School Lunch Program as a proxy) and whether the entity is in a rural or urban area. 54 C.F.R. § 54.505(c). School districts, library systems, and consortia with multiple eligible entitles determine the discount for which they are eligible by calculating a weighted average of the discounts available to their member entities. 54 C.F.R. § 54.505(b)(4). The discount matrix does not, under any circumstance, yield a 26 percent discount to an individual school, though it may yield both higher and lower discount percentages. Therefore, an applicant would be eligible for a 26 percent discount only if it applied for shared services and the weighted average of the discounts available to the schools sharing the services yielded a 26 percent discount.

¹⁷ Naperville Form 471, Block 5, Item 23j; Naperville Form 471, Block 4, Item 10c.

We note, however, that a different balancing might result in circumstances other than those present here, particularly where the émitted information cannot be discerned so easily from other material included in the application. This decision is autrowly limited to the facts presented here, and does not prevent SLD from applying its minimum processing standard in the future.

Federal Communications Commission

application will be granted upon processing by SLD. Naperville's appeal only addresses whether its application should be reviewed as filed within the filing window.

16. Presently, we have a number of requests for review that raise issues similar to the instant appeal. Moreover, we are aware that similar issues have been raised in matters that remain pending before SLD. We direct SLD and the Common Carrier Bureau to resolve these matters consistent with the underlying rationale of this Order. Specifically, we conclude that it is inappropriate for SLD to return an application without consideration under its minimum processing standard where (1) the request for information was a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application is otherwise substantially complete.

III. ORDERING CLAUSES

- 17. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 54.719 and 54.722 of the Commission's rules, 47 C.F.R. §§ 54.719 and 54.722, that the Request for Review filed on July 11, 2000, by Naperville Community Unit School District 203, Naperville, Illinois, IS GRANTED.
- 18. IT IS FURTHER ORDERED that the Request for Review filed on July 11, 2000, by Naperville Community Unit School District 203, Naperville, Illinois, is REMANDED to the Schools and Libraries Division of the Universal Service Administrative Company, and the Schools and Libraries Division is directed to take action to effectuate the steps outlined in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas Secretary

Southwestern Bell
Telephone Co
Local-Phone & Data Lines

Attachment E

Description of Service Attachment

Attachment Number

2

Entity Number	Applicant's Form Identifier	Contact Person	Phone Number
0000139831	OCPS-PY4-471-01	Steve Washam	(405) 297-6798

Service Provider Name/SPIN Contract Number Funding Request

Cox Oklahoma Telcom, Inc.
143005575

Contract Number Funding Request

\$71,128.71

Description of Service

Leased high-speed data network

Oklahoma Towar 210 Park Avenue, Suite 2640 Oklahoma City, OK 73102 (405) 600-6333 (405) 600-6565 fax www.cox.com



Oklahoma City Public School District Wide Area Network Locations

School Name	Service Level	Monthly Recurring
Adams Elementary	10 Mbps	\$ 900
Arcadia Elementary	10 Mbps	\$ 900
Arthur Elementary	10 Mbps	\$ 900
Belle Isle High School	10 Mbps	\$ 900
Bodine Elementary	10 Mbps	\$ 900
Britton Elementary	10 Mbps	\$ 900
Buchanan Elementary	10 Mbps	\$ 900
Capital Hill Elementary	10 Mbps	\$ 900
Capital Hill High School	10 Mbps	\$ 900
Classen High School	10 Mbps	\$ 900
Cleveland Elementary	10 Mbps	\$ 900
Independence Enterprise	10 Mbps	\$ 900
Columbus Elementary	10 Mbps	\$ 900
Coolidge Elementary	10 Mbps	\$ 900
Creston Hills Elementary	10 Mbps	\$ 900
Dewey Elementary	10 Mbps	\$ 900
Douglas High School	10 Mbps	\$ 900
Dunbar Elementary	10 Mbps	\$ 900

Attachment E

	Service Level	Monthly Recurring
School Name		\$ 900
Edgemere Elementary	10 Mbps	\$ 900
Edwards Elementary	10 Mbps	\$ 900
Eisenhower Elementary	10 Mbps	
Emerson Alternative High School	10 Mbps	\$ 900
Eugene Field Elementary	10 Mbps	\$ 900
	10 Mbps	\$ 900
Filmore Elementary	10 Mbps	\$ 900
Van Buren Elementary		\$ 900
Garden Oaks Elementary	10 Mbps	.,
Gateway Academy MS	10 Mbps	\$ 900
Gatewood Elementary	10 Mbps	\$ 900
	10 Mbps	\$ 900
Green Pastures Elementary	10 Mbps	\$ 900
Harding MS	- ,	\$ 900
Hawthorne Elementary	10 Mbps	\$ 900
Hayes Elementary	10 Mbps	•
Heronville Elementary	10 Mbps	\$ 900
Hillcrest Elementary	10 Mbps	\$ 900
	10 Mbps	\$ 900
Hoover MS	10 Mbps	\$ 900
Horace Mann Elementary		\$ 900
Independence School	10 Mbps	\$ 900
Jackson MS	10 Mbps	
Jefferson MS	10 Mbps	\$ 900
John Marshall High School	10 Mbps	\$ 900

	1 Oklahoma City Public Schools Contact: Steve Washalfi (403) 291-9
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School Name	Service Level	Monthly Recurring
Johnson Elementary	10 Mbps	\$ 900
Kaiser Elementary	10 Mbps	\$ 900
Lafayette Elementary	10 Mbps	\$ 900
Lee Elementary	10 Mbps	\$ 900
Linwood Elementary	10 Mbps	\$ 900
Longfellow Elementary	10 Mbps	\$ 900
Madison Elementary	10 Mbps	\$ 900
Mark Twain Elementary	10 Mbps	\$ 900
Martin Luther King Jr. Elem.	10 Mbps	\$ 900
Monroe Elementary	10 Mbps	\$ 900
Moon MS	10 Mbps	\$ 900
Nichols Hills Elementary	10 Mbps	\$ 900
North Highland Elementary	10 Mbps	\$ 900
Northeast High School	10 Mbps	\$ 900
Northwest Classen HS	10 Mbps	\$ 900
Oakridge Elementary	10 Mbps	\$ 900
Parker Elementary	10 Mbps	\$ 900
Parmelee Elementary	10 Mbps	\$ 900
Pierce Elementary	10 Mbps	\$ 900
Polk Elementary	10 Mbps	\$ 900
Prairie Queen Elementary	10 Mbps	\$ 900
Putnam Heights Elementary	10 Mbps	\$ 900

Attachment E	Okianoma City Public Schools Contact: Steve Washalfi (405) 287-
ent E	Contact: Steve Washam (405) 297-
	167 (cn.

Page 6 of 7

O. L. al Niama	Service Level	Monthly Recurring
School Name	10 Mbps	\$ 900
Quail Creek Elementary	10 Mbps	\$ 900
Rancho Village Elementary	-	\$ 900
Ridgeview Elementary	10 Mbps	\$ 900
Rockwood Elementary	10 Mbps	·
Rodgers MS	10 Mbps	\$ 900
Roosevelt MS	10 Mbps	\$ 900
Sequoyah Elementary	10 Mbps	\$ 900
Service Center Admin Bldg	10 Mbps	\$ 900
Shields Heights Elementary	10 Mbps	\$ 900
Shilder Elementary	10 Mbps	\$ 900
Southeast High School	10 Mbps	\$ 900
Southern Hills Elementary	10 Mbps	\$ 900
Spencer Elementary	10 Mbps	\$ 900
Stand Watie Elementary	10 Mbps	\$ 900
Star Elementary	10 Mbps	\$ 900
Stonegate Elementary	10 Mbps	\$ 900
Taft MS	10 Mbps	\$ 900
Telstar Elementary	10 Mbps	\$ 900
The Research Center	10 Mbps	\$ 900
Thelma Parks Elementary	10 Mbps	\$ 900
US Grant High School	10 Mbps	\$ 900
Webster MS	10 Mbps	\$ 900

School Name	Service Level	Monthly Recurring
West Nichols Hills	10 Mbps	\$ 900
Western Village Elementary	10 Mbps	\$ 900
Westwood Elementary	10 Mbps	\$ 900
Wheeler Elementary	10 Mbps	\$ 900
Willard Special Center	10 Mbps	\$ 900
Willow Brook Elementary	10 Mbps	\$ 900
Wilson Elementary	10 Mbps	\$ 900
* Academy Programs	1.544 Mbps	\$ 2777
TOTAL MONTHLY RECURRIN	G:	<u>\$84,677</u>

^{*} proposed locations to receive DS-1 level of service.

Attachment F

Page 1

a. If the service is site-specific (provided to one site and not shared by others), list the Entity Number of the entity from Block 4 receiving. You MUST attach a description of the service, including a breakdown of components and costs, plus any relevant brand names. Label Funding Commitment \$ \$71,128.71 (LxI) × 06/30/2002 03/20/1998 **Total Charges** 04/09/1998 07/01/2001 2 of % discount Worksheet Block 4 84% 16 Billing Account Number(e.g., billed telephone number) OKC9900SY 19b Service End Date (mm/dd/yyyy) (use only for "T" or "MTM" services) Block 5, page Allowable Vendor Selection/Contract Date(mm/dd/yyyy) **b.** If the service is shared by all entitles on a Block 4 worksheet, list the worksheet number (e.g., A-1) \pm 1. year pre-discount ۲ Ž Total program \$84,677.04 (E+H) Make as many copies of this page as necessary, and number the completed pages to assure that they are all processed correctly 15 Contract Number (if available; use "T" if tariffed services, "MTM" if month-to-month services as described in Instructions) OCPS-PY4-471-01 (405) 297-6798 recuring (one- the \$ amount in discount \$ amount time) \$ charges (F) is ineligible? for one-time charges \$0.00 Annual eligible pre-Instructions: Use one Block 5 page forEACH service (Funding Request Number) for which you are requesting discounts. (F minus G) 20 Contract Expiration Date(mm/dd/yyyy) 18 Contract Award Date (mm/dd/yyyy) this description with an Attachment #, and note number in space provided below Non-Recurring Charges 19a Service Start Date (mm/dd/yyyy) How much of \$0.00 (based on Form 470 filing) Applicant's Form Identifier Phone Number (to be assigned by administrator) \$0.00 Annual non-<u></u> Annual pre-discount \$ \$84,677.04 553080000038015 amount for eligible recurring charges 143005575 Telecommunications Service O Internet Access O Internal Connections Block 5: Discount Funding Request(s) Service Provider Name Cox Oklahoma Telcom, Inc. provided in months service program Category of Service (only ONE category should be checked) jo# year 12 A Recurring Charges Attachment # 2 \$7,056.42 Eligible monthly this service: pre-discount (A minus B) Form 470 Application Number(15 digits) amount Identification Number(9 digits) \$0.00 Monthly \$ charges How much of the \$ amount in (A) is Receiving This Service: SPIN - Service Provider ineligible? Contact Person Steve Washam m Entity Number 0000139831 Description of This Service: **Entity/Entities** Calculations (total amount per month for service) \$7,056.42 23 4 73 22 7 7 7

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FCC Form 471 -- October 2000



FAX TRANSMITTAL

To: David Krowll	Date: March 21, 2001			
Firm: SLD				
Fax Number: (888) 276-8736	Number of Pages Including Cover: 21			
From: John D. Harrington	Phone: (405) 341-4140 ext 100			
	Email: jharrington@fundsforlearning.com			
Re: PY4 App #262187	CC:			
☐ Urgent ☐ For Review ☐ Please Comm	nent Please Reply Please Recycle			
Jon Cruver said that I should forward this to you. In reviewing Oklahoma City's application we discovered a clerical error. See attached. Please let me know if you have any questions.				

If you do not receive all of the pages or have received this fax in error, please call the above person at the number indicated. Thank you.

FUNDS FOR LEARNING, LLC www.fundsforlearning.com

2111 Wilson Blvd, Suite 700 Arlington, VA 22201 (703) 351-5070 (703) 351-6218 (fax) 229 North Broadway Edmond, OK 73034 (405) 341-4140 (405) 341-4140 (fax)

Attachment H

Page 1 of 1



FAX TRANSMITTAL

To: Matthew Banks	Date: March 21, 2001				
Firm: SLD					
Fax Number: (888) 276-8736	Number of Pages Including Cover: 3				
From: John D. Harrington	Phone: (405) 341-4140 ext 100				
	Email: jharrington@fundsforlearning.com				
Re: PY4 App #262187	CC:				
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle					
Here are the corrected Block 5 funding requests for Oklahoma City Public Schools. Let me know if you have any other questions. Thanks for your help.					

If you do not receive all of the pages or have received this fax in error, please call the above person at the number indicated. Thank you.

FUNDS FOR LEARNING, LLC www.fundsforlearning.com

2111 Wilson Blvd, Suite 700 Arlington, VA 22201 (703) 351-5070 (703) 351-6218 (fax) 229 North Broadway Edmond, OK 73034 (405) 341-4140 (405) 341-4140 (fax)

Attachment |

Page 1 of 2

OCPS-PY4-471-01

Page 4 of 6

FCC Form 471 - October 2000

\$853,544.16

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\$1,018,124.00

\$0.00

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80.03

\$1,016,124.00

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\$84,677.00

\$84,677.00

program



FAX TRANSMITTAL

To: Data Entry Corrections	Date: April 27, 2001			
Firm: SLD				
Fax Number: 973-884-8217	Number of Pages Including Cover: 3			
From: John D. Harrington	Phone: (405) 341-4140 ext 100			
	Email: jharrington@fundsforlearning.com			
Re: Correction to FRN 663320 CC: Steve Washam (OCPS)				
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle				
Attached is a data entry correction to FRN 663320 for Oklahoma City Public Schools (entity number 139831). If you have any questions, please contact me, John Harrington, at 405-341-4140 ext 100. Thank you.				

If you do not receive all of the pages or have received this fax in error, please call the above person at the number indicated. Thank you.

FUNDS FOR LEARNING, LLC www.fundsforlearning.com

2111 Wilson Blvd, Suite 700 Arlington, VA 22201 (703) 351-5070 (703) 351-6218 (fax) 229 North Broadway Edmond, OK 73034 (405) 341-4140 (405) 341-4140 (fax)

Attachment J

Page 1 of 4

Data Entry Correction - Oklahoma City Public Schools (BEN 139831)
Contact John Harrington 405-341-4140 ext 100



Universal Service Administrative Company

Schools & Libraries Division

FORM 471 RECEIPT ACKNOWLEDGMENT LETTER (Funding Year 4: 07/01/2001 - 06/30/2002)

April 16, 2001

OKLAHOMA CITY PUBLIC SCHOOLS STEVE WASHAM 900 N.E. KLEIN, P.O. BOX 25428 OKLAHOMA CITY, OK 73125-0428

Re: Form 471 Application Number: 262187
Funding Year 4: 07/01/2001 - 06/30/2002
Applicant's Form Identifier: 0CPS-PY4-471-01
Billad Entity Number: 139831

NOTICE: This notification is an acknowledgment of RECEIPT and SUCCESSFUL DATA ENTRY of your ECC Form 471, Services Ordered and Certification Form, reflecting \$958,493.04 in total program year pre-discount costs for services. This letter confirms that the Form 471, Item 21 attachment, and signed Form 471 Certification form have been received.

This letter does NOT contain any decisions concerning your requests for discounts. Note, however, the two-week response deadline described below.

Please keep this latter for your records. The Form 471 application number cited above is critical for you to link your application to future Schools and Libraries Division (SLD) communications.

Please be advised that your Form 471 application materials were postmarked or received by the SLD on 01/11/2001 and successfully entered into our data system. SLD's Program Integrity Assurance (PIA) Team will now review your application for compliance with program rules. Once the review of your application has been completed, you will receive a separate Funding Commitment Decision Letter to inform you of the disposition of your application. Until you receive a Funding Commitment Decision Letter from the SLD, you cannot assume that you will receive the discounts for which you are applying.

Your application will be considered within the application filing window wherein all applications which meet the Minimum Processing Standards are treated as though they were received on the same day,

HOW TO USE THIS 471 RECEIPT ACKNOWLEDGMENT LETTER TO CORRECT INFORMATION ON YOUR FORM 471 (ACT WITHIN 2 WEEKS!)

If you find data entry errors on this letter, or you previously identified errors on your form 471, these can be corrected using this form 471 Receipt Acknowledgment Letter. Examples of the errors that can be corrected are:

Block 1 information (such as contact person or street address);
Reductions to Block 5 Funding Requests;
SPIN is incorrect because of a data entry error or because the company has merged with or been acquired by another company (Requests to change service providers for other reasons cannot be accommodated through the Receipt Acknowledgment Process.);
If on your Form 471 you incorrectly combined or "bundled" into one Funding Request Number (FRN) two or more services from different service providers

Data Entry Correction - Oklahoma City Public Schools (BEN 139831) Contact John Harrington 405-341-4140 ext 100

Funding Request Number: 663319
SPIN: 143001192 Service Provider Name: ACCT Corp.
Category of Service: Telc Syc(s)
Pre-discount \$ Amount: \$12,000,00%
Discount Percentage: 842

Funding Request Number: 663320

SPIN: 143005575 Service Provider Name: Government Telcom, Inc. dba Cox Business Services
Category of Service: Telc. Svg(s)
Pre-discount & Amount: 1886-971 16

Discount Percentage: 18853, 544.16

Funding Request Number: 563321
SPIN: 143000693 Service Provider Name: Nextel West Corp.
Category of Service: Telc Svc(s)
Pre-discount \$ Amount: Sin 400000
Discount Percentage: 847

Funding Request Number: 663322
SPIN: 143015254 Service Provider Name: Category of Service: Inst Accis)
Pre-discount 3 Amount: \$170,400.00
Discount Percentage: 842

Funding Request Number: 563324
SPIN: 14304662 Service Provider Name: Southwestern Bell Telephone Company
Category of Service: Telc Svc(s)
Pre-discount \$ Amount: \$602,376.00
Discount Percentags: 842

Funding Request Number: 663326 SPIN: 143000465 Service Provider Name: Southwestern Held Wireless Inc. Catagory of Service: Telc Svc(s) Pre-discount \$ Amount: \$52,800 00 Discount Percentage: 844

Sunding Request Number: 692617
SPIN: 143018525 Service Provider Name: Arch Paging The.
Category of Service: Telc Svc(s)
Pre-discount \$ Amount: \$2.840500
Discount Percentage: 847

Schools and Libraries Division/USAC

Page 4 of 4

471RA Ltr. 04/16/2001

ACTIVITY REPORT

TIME : 04/27/2001 08:33 NAME : FUNDSFORLEARNING FAX : 4053417008 TEL : 4053414140

	DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
	04/23 04/23 04/24 04/24 04/24 04/24 04/24 04/24 04/25 04/25 04/25 04/25	166:159:155:207 166:155:207 166:155:207 166:155:207 166:156:207 166:156:207 166:156:207	917033516218 7033516218 99486018 4052976773 7033516218 914135134395 917033516218 7033516218 919738848066 FFL 7138926749 918882768736	29 01:35 21 54 02:56 62:27 01:03 22:35 01:26 08 08	01 05 01 02 05 03 02 02 01 01 01 05 00	66599999999999999999999999999999999999	RX ECM TX ECM RX ECM RX ECM RX ECM TX ECM RX ECM TX ECM RX ECM
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BUSY: BUSY/NO RESPONSE
NG : POOR LINE CONDITION
CV : COVERPAGE
CA : CALL BACK MSG
POL : POLLING
RET : RETRIEVAL



FAX TRANSMITTAL

To: Data Entry Corrections	Date: 5/9/2001
Firm: SLD	
Fax Number: 973-884-8217	Number of Pages Including Cover: 4
From: Cathy Turner	Phone: (405) 341-4140 x 650
	Email: cturner@fundsforlearning.com
Re: Correction to FRN 663320	CC:
☐ Urgent ☐ For Review ☐ Please Comm	nent 🔀 Please Reply 🗌 Please Recycle
On April 27, 2001 we faxed a data entry correction Schools. I phoned the SLD customer support line was unable to see if the correction had been made requesting a status update. Could you please fax of John Harrington's attention at 405-341-4140 ext 1	today and spoke with Michelle. Michelle and she suggested that I fax you again or call the status of this data correction to

If you do not receive all of the pages or have received this fax in error, please call the above person at the number indicated. Thank you.

FUNDS FOR LEARNING, LLC www.fundsforlearning.com

2111 Wilson Blvd, Suite 700 Arlington, VA 22201 (703) 351-5070 (703) 351-6218 (fax)

2709 Lancaster Court Suite 1100 Edmond, OK 73003 (405) 341-7003 (405) 971-7685 (fax)

Attachment K

Page 1 of 4

Date Event

7-Mar Data entry request faxed to Jon Cruver

- 21-Mar Jon Curver said to talk to Matthew Banks. Banks said to fax him corrected Block 5. Thought it would be fixed.
- 21-Mar Corrected block 5 faxed to Matthew Banks
- 16-Apr RAL letter sent by SLD (date on letter)
- 24-Apr RAL received by OKC
- 27-Apr Data entry correction faxed to SLD
- 9-May Spoke with Michelle at SLD line; She instructed us to refax
- 9-May Data entry correction faxed to SLD
- 17-May Spoke with Don at SLD. He said change had not been made and that he'd never seen them fix anything that involved an increase in the funding request.

FUNDING COMMITMENT REPORT

Service Provider Name: Cox Oklahoma Telcom.LLC dbm Cox Business Services Service Provider Identification Number: 143005575

Service Provider Name; Cox Oklahoma Telcom LLC dbm Cox Business Services Service Provider Identification Number; 143005575

Funding Request Number; 653320

Form 470 Application Number; 262187

Applicant Stront Address; 900 N.E. KLEIN, F.D. ECK 25428

Applicant State; 0K

Applicant Number; 13831

Mane of Contact; PRONE

Contract Hadornstion; (405) 297-6798

Funding Status; Europe (405)

Funding Status; Sunder

Contract Hadornstion; (405) 297-6798

Funding Status; Sunder

Contract Award Date; 0A/09/1698

Contract Award Date; 0A/09/1698

Contract Award Date; 0A/09/1698

Contract Award Date; 0A/09/1698

Contract Expiration Date; 0A/09/1698

Contract Popular Contract Charges; 37056.42

Portion of Total Extbated Monthly Recurring Charges that is Incligible; 60,00

Number of Month's Bernelling Service Provided in Program Services; 60.00

Number of Month's Exporting Charge; 80.00

Annual Resourcing Service Provided in Program; 60.00

Annual Resourcing Service Provided in Program; 60.00

Annual Fre-Discount Amount; 60.00

Applicant's Approved as submitted

Applicant's Approved Status; Panding Approved as submitted

Applicant approved Status; Panding Approval

Applicant Letter Date; 08/07/2001

ECDL/Schools and Libraries Division/USAC

Fags 7 of 7

08/07/2001

** TOTAL PAGE.07 **

Attachment K

Page 3 of 4

Entity Humbert000139931	199831 • Washem			₹	Applicant's Form Identifier Phose Number	dentifler	OCPS-PVA-471-01 (405) 297-4798	101		
Block 5: Discount Funding Request(s) Instructions: Use one Book 5 page for EACH service (Funding Requestate or many copies of this page as necessary, and number the companies.	Discount one Book 5 payages of this paye	Funding to Exch ser as necessary, a	Requ	st Num	t Number) for which yo	ch you are requester that they are a		Block 5, page	2 94	7
11 Category o	11 Calegory of Service (erly OFE calegory should be decided)	E category should be	atected	7	Mile Frank	to mark service	15 Contract the title and action to describe in reflections AM.	V/N	ASOR	
(C) Telegomen	© Telecomenumications Service	O Informed Acce	Š		16 Billing Ac 17 Allowahl	count Numb	Billing Account Number ing, bind ingless mean Circustons Agowahle Vendor Selection/Confrect Data (mavid)yy) nays	Lette (exeléd)yyy	100011998	3
12 Form 476 A	12 Form 478 Application Number (15498)	nber (15 dgits)	55306	553080000038015	i	(based on Form 470 (fing)			CAMPA11998	3 5
13 SPRI - Sen Identificati	SPRI - Service Provider Identification Number (1 dpls)	Į.		143005575	18 Contract	Contract Assard Date (methypy) Service Start Date (methypy)	Addynet		07/01/2001	101
					(95 Sarvice E	ind Date (mm)	(9th Service End Dake (mm/dd/yyy) (res only for "T or "MTM" services)	T or MINT sen	Vicee)	
4.4	C. Stranger	Cox Oklahoma Telcom, Inc.	Felcorn, fr	2	20 Contract Expiration Date (maled);;;)	Expiration Di	(abb (market))))		06/30/2002	2002
	1	You MUST attach this description wi Attachment # 2	of the description of the second of the seco	You M.S.T attach is description of the service, final view a breek down of components and costs, plus any relevant brand names. Laboraties description with an Attachment #, and note number in space provided below. Attachment # 2	inckleing a br is number in s	eekdown of o sace provided	omponents and & below.	Sele, plus any n	elevant bran	nd names, Laross
22 Enlity/Entitles Receiving This	Service:	a. If the service ithis service : b. If the service	is site-spe is shared t	a. If the service is site-specific (provided to one eithe and not shared by others). As the Entity Number of the entity from Block 4 receiving this service : b. If the service is shared by all entities on a Block 4 worksheet, itst the worksheet number (e.g., A-1): A-1	e site and not Bock 4 worksh	shared by off	ners), list the Entity orksheet number ((e.g. A-1): A-1	andly from	Block 4 receiving
23 Calculations			1	_	¥on.	Non-Recurring Charges	:harges		Total Charges	- 1
	1	The same of the sa	2	*	4	Ü	В	1	-	×
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\$84.677.00	\$0.00	\$64,677.00	ğ	\$1,618,124.00	3 0.0 \$	20.00	\$0.00	\$1,016,124.00	% 78 %	\$853,544.16

FCC Form 471 -- October 2000

Attachment K

Attachment L

Page 1 of 2

Orin Heend

From:

Orin Heend [oheend@fundsforlearning.com]

Sent:

Thursday, August 23, 2001 8:19 PM

Subject:

gmcdonald@universalservice.org Oklahoma City Public Schools

8/23/01

Mr. George McDonald Acting President USAC, Schools and Libraries Division

George:

I am writing to request your support to help Oklahoma City Public Schools (OCPS) remedy as quickly as possible a funding commitment problem that should have been resolved long before now. Unfortunately, the SLD recently issued a Program Year Four funding commitment decision letter to OCPS that was incorrect due to a Block 5 clerical error. The funding commitment for leased data circuits was for \$71,128.68 (pre-discount \$84,667); it should have been for \$853,544.16 (pre-discount \$1,016,124.00).

Our understanding is that OCPS has money budgeted only for the discounted portion of the cost of its leased wide area network (all 40,000 OCPS students access the Internet through this network). If OCPS cannot locate funds from another source to cover the remainder of the cost, it may be forced to forego the service entirely unless and until the SLD acts. In these circumstances, the harsh reality is that every month that passes with no resolution means another month's worth of E-rate support that the school district never will see. "Success" on appeal four months from now would erase effectively almost half of the funding to which the school district is entitled. In ten months, "success" would be completely worthless. Time, therefore, clearly is of the essence.

I was hoping that we could discuss this matter in advance of OCPS filing an appeal, so that together we could find a way to help the school district chart the most efficient and effective course.

The facts, briefly, are as follows:

- --Due to a clerical error, Block 5, Column E ("Annual pre-discount \$ amount for eligible recurring charges"), lists the monthly service fee, \$84,677, not the annual fee. This amount, 1/12 of what OCPS intended to list in that field, was obviously an error. The correct annual pre-discount amount, the amount that should have been listed in Column E, is \$1,016,124.00.
- --Both the mistake and the correct amount were easily discernable from the application itself, as the description of service clearly showed one month of service at \$84,677, the correct pre-discounted amount. See the price quote from Cox Telcom, Inc. shown in Description of Service Attachment number 2. The four and one half page quote lists each school along with a service level and a monthly recurring fee. The last page of the quote states clearly: "TOTAL MONTHLY RECURRING: \$84,677
- --The \$1,016,124 estimated annual fee for this service is consistent with the school district's requests and funding commitments for this service in Program Years One, Two, and Three.
- --During the Year 4 application review process, SLD staff assured us more than once that the FCDL would be issued for the correct amount, as that amount was clearly and unambiguously evident in the supporting documentation that OCPS had filed with the Form 471.

As you know, the FCC has held repeatedly that the SLD has authority to correct a clerical error in these kinds of circumstances. See, e.g., Methacton School District, Norristown, PA (Released May 17, 2000). ("Under SLD procedures SLD may grant appeals when the applicant has correctly listed the proper item on another part of the Form 471"). Compare Scranton School District, Scranton, PA (Released January 7, 2000), where the FCC refused to allow an applicant to amend a funding request because nothing else in the application reasonably supported the conclusion that the applicant intended to request a different amount.

OCPS is a school district with a very large, economically disadvantaged student population. The service at risk here is Internet access, and Internet access lies at the very heart of the E-rate program. The best interests of this program are not served by cutting off large numbers of economically disadvantaged students from Internet access solely because of a

clerical error on a Form 471 that could have been corrected easily from information contained elsewhere in the application. We certainly hope you agree, and that you will support us in our efforts to turn this around as quickly as possible.

We would appreciate whatever help you can provide. I will call you early next week to follow up or please call me at 703-351-5070.

Thanks, Orin Heend

Orin Heend Funds For Learning, LLC 2111 Wilson Blvd. Suite 700 Arlington, VA 22201 703-351-5070 703-351-6218 (fax) oheend@fundsforlearning.com

Attachment M

Page 1 of 1

7. Post-Commitment Events

Appeals Process

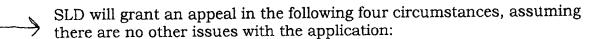
Who can appeal

According to FCC rules, any party aggrieved by an action taken by USAC or SLD may appeal that decision. That means that Service Providers or applicants may file an appeal. (It would be best not to have both file an appeal, unless it's a consolidated appeal, raising the same issues.) The appeal may be filed first with SLD and, if not satisfactorily resolved, then with the FCC. Alternatively, appeals may be filed with the FCC directly. (An appeal cannot be filed with both the SLD and FCC simultaneously; in such instances, the FCC will dismiss without prejudice, pending the outcome of the SLD decision.) Fax and email appeal letters are NOT accepted. More information about appeals can be found in the Reference Area of the SLD web site under Appeals.

It is important to note that in some instances there is a third party, such as a state Department of Education, which is neither the Service Provider nor the applicant. The third party may want to file an appeal on behalf of applicants, but this should be discouraged. Remember, the appeal right belongs to a party that has an interest in the transaction and where that interest is affected by the USAC/SLD decision.

Basis for Review

SLD reviews appeals according to the guidelines established by the Schools and Libraries Programmatic Subcommittee of the USAC Board of Directors. (They are included in the Reference Area of the web site under Appeals – SLD Guidelines for Review.)



- (1) If the appeal makes it clear that SLD erred when it performed its initial review of the application;
- (2) If the appeal makes it clear the applicant made an error in information provided in or with the application, and SLD could have identified the error by the information on hand during initial review;
 - (3) If the appeal provides clarifying information that corrects an assumption SLD made during the initial review because there was insufficient information; and
 - (4) When SLD obtains policy clarification or new policy between the time of the initial application commitment decision and the appeal decision.